NO. 19509

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSEPH C. AMSLER and
JOHN W. IRWIN,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

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TOPICAL INDEX

TABLE OF AUTHORITIES

Constitution

Statutes

Rules

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I

STATEMENT OF JURISDICTION

Appellants, together with Barry W. Keenan, were indicted by the Grand Jury in and for the Southern District of California on January 2, 1964, for charges in six counts arising out of the interstate transportation of a kidnap victim, Frank Sinatra, Jr. [C. T. 2-10]. 1/

Pursuant to pleas of not guilty, trial by jury commenced on February 10, 1964. On March 7, 1964 the jury returned verdicts finding defendant Keenan guilty as charged in Counts I through VI inclusive [C. T. 328]; defendant Irwin guilty as charged in Count I

1/ "C. T." refers to Clerk's Transcript.

and Counts III through VI inclusive and not guilty as to Count II [C. T. 329]; and, as to defendant Amsler, guilty as charged in Counts I through VI inclusive [C. T. 182].

Defendants were sentenced as provided by law [C. T. 185, 190-193, 333, 368]. Separate appeals were taken by each defendant. Timely notices of appeal were filed by each of the defendants from the several judgments of conviction [C. T. 201, 345, 378]. Defendant Keenan on June 22, 1965 moved to dismiss his appeal and this Court ordered dismissal of the appeal on June 29, 1965.

The United States District Court for the Southern District of California had jurisdiction of the causes of action upon which the judgments appealed from were entered pursuant to Title 18, United States Code, Section 3231.

This Court has jurisdiction to entertain these appeals and to review the several judgments of the District Court pursuant to Title 28, United States Code, Sections 1291 and 1294[1].

II

STATUTES, RULES AND ORDERS INVOLVED

The indictment was brought under the following statutes which provide, in pertinent part, as follows:

Title 18, United States Code, Section 2 provides:

"(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

"(b) Whoever willfully causes an act to be done which

if directly performed by him or another would be an offense against the United States, is punishable as a principal."

Title 18, United States Code, Section 371 provides: "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both."

. . .

Title 18, United States Code, Section 875(a) provides: "Whoever transmits in interstate commerce any communication containing any demand or request for a ransom or reward for the release of any kidnapped person, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both."

Title 18, United States Code, Section 1201 provides: "(a) Whoever knowingly transports in interstate or foreign commerce, any person who has been unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away and held for ransom or reward or otherwise, except, in the case of a minor,

by a parent thereof, shall be punished (1) by death if the kidnapped person has not been liberated unharmed, and if the verdict of the jury shall so recommend, or (2) by imprisonment for any term of years or for life, if the death penalty is not imposed."

"(b) The failure to release the victim within twenty-four hours after he shall have been unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away shall create a rebuttable presumption that such person has been transported in interstate or foreign commerce."

Title 18, United States Code, Section 1202 provides:

"Whoever receives, possesses, or disposes of any money or other property, or any portion thereof, which has at any time been delivered as ransom or reward in connection with a violation of section 1201 of this title, knowing the same to be money or property which has been at any time delivered as such ransom or reward, shall be fined not more than $10,000 or imprisoned not more than ten years, or both."

Judge East was designated by the Chief Judge of this Circuit to try this case pursuant to Title 28, United States Code, Section 292(b) which provides as follows:

"The chief judge of a circuit may, in the public interest,

designate and assign temporarily any district judge of the circuit to hold a district court in any district within the circuit."

Title 18, United States Code, Section 3432 provides:

"A person charged with treason or other capital offense shall at least three entire days before commencement of trial be furnished with a copy of the indictment and a list of the veniremen, and of the witnesses to be produced on the trial for proving the indictment, stating the place of abode of each venireman and witness."

Rule 5(a) of the Federal Rules of Criminal Procedure provides:

"An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available commissioner or before any other nearby officer empowered to commit persons charged with offenses against the laws of the United States. When a person arrested without a warrant is brought before a commissioner or other officer, a complaint shall be filed forthwith."

Rule 14 of the Federal Rules of Criminal Procedure provides:

"If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires."

Rule 17(b) of the Federal Rules of Criminal Procedure provides:

"The court or a judge thereof may order at any time that a subpoena be issued upon motion or request of an indigent defendant. The motion or request shall be supported by affidavit in which the defendant shall state the name and address of each witness and the testimony which he is expected by the defendant to give if subpoenaed, and shall show that the defendant cannot safely go to trial without the witness and that the defendant does not have sufficient means and is actually unable to pay the fees of the witness. If the court or judge orders the subpoena to be issued the costs incurred by the process and the fees of the witness so subpoenaed shall be paid in the same manner in which similar costs and fees are paid in case of a witness subpoenaed in behalf of the government."

Rule 41(e) of the Federal Rules of Criminal Procedure provides:

> "A person aggrieved by an unlawful search and seizure may move the district court for the district in which the property was seized for the return of the property and to suppress for use as evidence anything so obtained on the ground that (1) the property was illegally seized without warrant, or (2) the warrant is insufficient on its face, or (3) the property seized is not that described in the warrant, or (4) there was not probable cause of believing the existence of the grounds on which the warrant was issued, or (5) the warrant was illegally executed. The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial. The motion to suppress evidence may also be made in the district where the trial is to be had. The motion shall be made before trial or hearing unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court in its discretion may entertain the motion at the trial or hearing."

Rule 53 of the Federal Rules of Criminal Procedure provides:

"The taking of photographs in the court room during the progress of judicial proceedings or radio broadcasting of judicial proceedings from the court room shall not be permitted by the court."

Order filed January 20, 1964, United States District Court, Southern District of California, in the matter of photographing, broadcasting, telecasting in court rooms, etc. [attached hereto as Appendix A].

Chapter II, Rule 3, Local Rules, United States District Court for the Southern District of California, "New Rules Governing Assignment" [Attached hereto as Appendix B].

III

STATEMENT OF THE CASE

On the morning of Friday, December 13, 1963, appellant Irwin telephoned the F. B. I. in San Diego. Shortly before midnight on the same day Barry Keenan and appellant Amsler were arrested in Los Angeles. Between 1:30 and 2:00 a. m. on Saturday, December 14, 1963, the F. B. I. contacted the United States Attorney and the United States Commissioner and Keenan, Amsler and Irwin were arraigned before United States Commissioners on a complaint filed that date which charged Barry W. Keenan and appellant Amsler, aided and abetted by appellant Irwin, with the interstate transportation of a kidnap victim, Frank Sinatra, Jr.,

in violation of Title 18, U.S.C. Sections 2, 1201.

On January 2, 1964 appellants Amsler and Irwin and defendant Barry W. Keenan were indicted in six counts [C.T. 2-10]. Count One charged conspiracy: to transport kidnap victim Frank Sinatra, Jr. in interstate commerce in violation of 18 U.S.C. §1201; to transmit interstate ransom communications in violation of 18 U.S.C. §875(a); and to possess ransom money from an interstate kidnapping in violation of 18 U.S.C. §1202; all in violation of 18 U.S.C. §371. The objects of said conspiracy were to kidnap, transport and obtain $240,000 in ransom money for the release of Frank Sinatra, Jr.

Some twenty-eight overt acts were listed as being among the overt acts committed by appellants to effect the objects of the conspiracy.

Count Two: charged Barry Keenan and appellant Amsler with the interstate transportation of kidnap victim Frank Sinatra, Jr. and charged appellant Irwin with aiding and abetting said violation in violation of 18 U.S.C., §§ 2, 1201.

Counts Three through Five inclusive: charged appellant Irwin with separate transmissions in interstate commerce of ransom communications and charged defendant Keenan and appellant Amsler with aiding and abetting said violations in violation of 18 U.S.C., §§ 2, 875(a).

Count Six: charged defendant Keenan and appellants Amsler and Irwin with the possession of ransom money from the interstate kidnapping of Frank Sinatra, Jr. in violation of 18 U.S.C. §1202.

On January 6, 1964 Barry W. Keenan, appellant Amsler and appellant Irwin were arraigned on said indictment in the United States District Court for the Southern District of California.

Between January 6, 1964 and February 10, 1964 numerous pre-trial motions were made, heard and ruled upon and Barry Keenan, appellant Amsler and appellant Irwin pleaded not guilty [C. T. 11-89]. Also, prior to trial there were hearings on some of the motions and pre-trial conferences were held [C. T. 11-90; Reporter's Transcript of proceedings January 6, 20, 27, 31; R. T. February 5, 10, 1964]. 2/

These motions and hearings thereon included defendants' motions for a bill of particulars; motion for psychiatric examination of defendant Amsler; motion for neuropsychiatric examination of Amsler; motion for psychiatric examination of defendant Keenan; Amsler's motion for production of statement made by defendant Amsler to the F. B. I.; motion of defendant Irwin to produce all statements unlawfully taken from the defendant; defendants' motions for reduction of bail; Amsler's motion for electroencephalographic examination of Amsler; Irwin and Amsler's motions for further bill of particulars; Amsler's motion for additional electroencephalographic examinations of Amsler; motions of defendants Amsler and Irwin to proceed in forma pauperis, to serve process without cost and to furnish the accused with a copy of the Reporter's Transcript without cost to defendants

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2/ "R. T." refers to Reporter's Transcript.

(the court held the defendants were indigents but each defendant was represented by counsel of his own choosing); defendant Amsler's motion to suppress evidence and statements; defendant Irwin's motion for return of seized property and suppression of evidence.

An extensive pre-trial hearing was held on defendants' motions to suppress the statements of Amsler, Irwin and Keenan, which motions were denied by the court. The Government made available to counsel for defendants on January 22, 1964, copies of the signed statements of each defendant and the letter dated October 24, 1963 by Keenan to "My parents and loved ones". Shortly thereafter the five reels of tape were also made available to them [Vol. I R. T. January 27, 1964 pp. 157, 158, 150-153, 490-494; see generally R. T. January 27-31, 1964 Vols. I-IV inclusive].

On February 10, 1964 jury trial commenced before United States District Judge William G. East. On March 7, 1964 the jury trial concluded and the jury returned its verdict, convicting appellant Amsler on all six counts [C. T. 182] and convicting appellant Irwin on Counts One, Three, Four, Five and Six and acquitting appellant Irwin on Count Two [C. T. 329]. At the conclusion of all the evidence in the case the court denied motions by all defendants for judgment of acquittal on all Counts One through Six [C. T. 159].

On March 13, 1964 Judge East sentenced appellant Amsler [C. T. 185-186] which sentence was subsequently reduced [C. T.

191-193]. On April 6, 1964 Judge East sentenced appellant Irwin [C. T. 368-369].

On March 31, 1964 appellant Irwin filed a motion for a new trial which was denied [C. T. 335-343; R. T. April 6, 1964, p. 40]. Appellant Amsler's motion to set aside the judgment was denied [C. T. 190].

Appellant Amsler filed his notice of appeal on March 11, 1964 [C. T. 194]. Appellant Irwin filed his notice of appeal April 6, 1964 [C. T. 345].

Over two years have elapsed since appellant Amsler filed his notice of appeal on April 7, 1964, during which time he has requested and obtained extensions of time as follows:

(1) Request for extension of time to docket and file Reporter's Transcript filed December 24, 1964.

(2) Request for extension of time to docket and file Reporter's Transcript filed January 25, 1965.

(3) Request for extension of time to file opening brief filed March 5, 1965.

(4) Request for extension of time to file opening brief filed April 9, 1965.

(5) Request for extension of time to file opening brief filed June 24, 1965.

(6) Request for extension of time to file opening brief filed July 20, 1965.

(7) Request for extension of time to file opening brief filed September 16, 1965.

(8) Request for extension of time to file opening brief filed October 29, 1965.

(9) Request for extension of time to file opening brief filed December 16, 1965.

Appellant Irwin filed timely notices of appeal and his present counsel was appointed to represent him on April 23, 1964. Since that time he has sought and obtained extensions of time as follows:

(1) Application for extension of time within which to file statement of points and appellant's opening brief filed April 26, 1965.

(2) Application for extension of time to file opening brief filed June 28, 1965.

(3) Application for extension of time to file opening brief filed July 23, 1965.

(4) Application for extension of time to file opening brief filed August 4, 1965.

(5) Application for extension of time to file opening brief filed September 23, 1965.

(6) Application for extension of time to file opening brief filed November 2, 1965.

Appellant Amsler's present counsel was his counsel throughout the trial and had access to a free copy of the "daily" transcript.

On December 27, 1965 appellee received appellant Amsler's opening brief which appellee moved to strike for non-compliance

with the Rules of this Court. Appellant Irwin's opening brief was received by appellee on January 7, 1966. Appellee's motion to strike appellant Amsler's opening brief was heard on January 31, 1966. The Court suggested that appellant Amsler's counsel confer with appellee's counsel and remedy the deficiencies of appellant Amsler's opening brief by correction, interlineation and filing the list of exhibits as required under Rule 18 of this Court. Following a conference of counsel on March 1, 1966 appellant Amsler on March 8, 1966 returned appellee's copy of the briefs with various changes and revisions which were not fully responsive to appellee's objections, set out in its motion to strike appellant Amsler's opening brief. On April 1, 1966 appellee was further advised by counsel for appellant Amsler concerning some of the matters which were the subject of appellee's objections to Amsler's opening brief and, to avoid further delay of this appeal, appellee advised this Court by letter dated April 7, 1966 to treat appellee's motion to strike appellant Amsler's opening brief as moot and on April 11, 1966, this Court denied the motion to strike as moot. Appellee's consolidated brief is in answer to the separate appeals of Irwin and Amsler by leave of this Court.

IV

STATEMENT OF FACTS

A. UNSUCCESSFUL ATTEMPTS TO KIDNAP THE VICTIM.

In October, 1963 [3/] Barry Keenan, twenty-three years old, who had an unstable employment history, who was separated from his wife of about a year and was living at home with his mother, realized he was incapable of earning enough money to keep up with his debts and "high living", and decided to get rich quick while he was young and able to enjoy it. He was "willing to risk everything and ten to twenty years of his life" to amass a fortune by committing a major crime - kidnapping. His scheme is revealed in a letter he wrote "To My Parents and Loved Ones" which was sealed and placed in a safe deposit box shortly after it was written. The letter, dated October 24, 1963, read in part as follows:

> "If you read this letter I am either dead or under arrest for felony kidnapping. If I am convicted you must consider me as being dead as I will be in prison for at least ten years. Why? As you all know, money has always been of utmost importance to me. . . . After realizing that I was incapable of earning enough money to keep up with all my debts and high living I decided to take a carefully calculated risk by undertaking a major

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3/ Unless otherwise indicated, all the events in this sequence of facts took place over a period of approximately two months commencing October 24, 1963.

crime." [Ex. 60,Overt Act #1, Vol. I, C.T. 3, R.T. 2018, 2676-2679, Ex. 12, 12B, 12G].

Keenan considered several possible victims but finally settled on Frank Sinatra, Jr. (hereafter referred to as Sinatra, Jr.), because Keenan knew Sinatra, Jr.'s father had ready access to large sums of money. Keenan wanted confederates to help him carry out the crime. He sought out his high school friend, appellant Amsler, twenty-three, a scuba diver and ex-boxer. He also talked to appellant Irwin, an older man of 42, a self-employed house painter by trade, who had been Keenan's mother's boy friend in 1957 or 1958, with whom Keenan and his mother had spent some time in Mexico. At various times during the weeks preceding the kidnapping Keenan discussed plans for the crime with appellants Irwin and Amsler and both agreed to participate [R.T. 2743-2744, 2757-2758, 2782, 3218, 3231, 3247, 3692; Ex. 61, Ex. 59, Ex. 58].

In late October Keenan attempted unsuccessfully to obtain guns in Mexico. Keenan learned that Sinatra, Jr., twenty years of age and a professional singer with the Tommy Dorsey orchestra, was appearing at the Arizona State Fair in Phoenix, Arizona. Keenan went to Phoenix alone on October 29th, bought two hand guns there, rented a house and arranged for a telephone under a fictitious name at 717 West Lynwood, Phoenix, which was to be used as a hideout where the victim was to be held. Appellant Irwin took a bus to Phoenix a day or two later where both Keenan and Irwin observed Sinatra, Jr. in his daily activities at the Fair.

They decided not to kidnap Sinatra, Jr. in Phoenix for various reasons including the fact that Phoenix was too isolated and there were no long distance direct dialing facilities by which to contact the victim's father [Ex. 61, pp. 2-4; Ex. 9, Ex. 10, Ex. 23, Ex. 43, Ex. 44; R. T. 2021-2026, 2115, 2696-2697, 2700, 3253, 3520-3522].

On November 15th Keenan learned that Sinatra, Jr. was appearing at the Ambassador Hotel in Los Angeles. He contacted Irwin and Amsler, who also was persuaded to take part in the kidnapping. Keenan, under the fictitious name of Frank Long, rented a house on Mason Avenue, Canoga Park, California, where the victim was to be held following the kidnapping, moved in furniture and had a telephone and extension installed. On November 21st, Keenan, using the fictitious names Bill Keane and Robert Allen, rented a room in a Hollywood motel where appellant Irwin and appellant Amsler met and stayed on November 29th. President Kennedy's assassination precipitated a postponement of the kidnapping [Ex. 14, Ex. 25, Ex. 40A, Ex. 61, pp. 6-8. R. T. 2037-2039; R. T. 1762-1771, 2754-2755, 3260-3276; Ex. 21, Ex. 21A, Ex. 22C; see Overt Acts #2 through #5, Vol. I, C. T. 3].

They next set November 29th as the date for the abduction and it was just a few days before this that Irwin and Amsler met for the first time. Prior to this time Keenan, who "master-minded" the crime, had always dealt with them separately. They each knew of the other's existence as "John" and "Joe" but had not met in person. They surveilled Sinatra, Jr.'s apartment for a few

days but observed he was brought home in the company of members of the orchestra and they decided not to kidnap him there. On December 3rd Keenan called Mrs. Tommy Dorsey in Miami, Florida from the Mason Avenue hideout and learned from her that the Dorsey Band with whom Sinatra, Jr. was singing was playing at the Harrah's Club, Stateline, California.

Keenan and Amsler left Los Angeles the next day, December 4th, for Stateline, California in Keenan's rented car to kidnap Sinatra, Jr. there. They had two guns with them. Enroute to Stateline from Bishop they had checked their return route from Nevada into California in order to avoid passing through any California Agricultural check stations at the California state line. They also practiced firing the .32 automatic. On December 5th they arrived in Stateline, California (Lake Tahoe) where they checked into Harvey's Hotel under the fictitious names Robert Allen and Joseph Gardiner. Amsler and Keenan the following two days occupied their time observing Sinatra, Jr.'s location and movements. During the afternoon of December 8th the license plates which were on Keenan's rented car were removed and another set installed [R.T. 2701, 2757-2760, 2803, 3279-3281, 3287-3288, 3293-3296, 3303-3311, 3322-3323; Ex.6A, Ex.6B, Ex.20A, Ex.26B, Ex.26D, Ex.26H, Ex.26I, Ex.40F].

B. THE KIDNAPPING.

At 8:30 p.m. on December 8th, Keenan called Sinatra, Jr.'s room at The Harrah's Club, using a fictitious name, Rex Harrison, to make certain that Sinatra, Jr. was in the room and at about 9:00 p.m. Keenan and Amsler, both carrying guns, entered Sinatra, Jr.'s room under the ruse of delivering a package to Sinatra, Jr. At gunpoint they forced John Foss, who was with Sinatra, Jr., to lie on the floor where they taped his hands and eyes. At gunpoint, they took $20 from Sinatra, Jr.'s wallet, forced him to dress and abducted him from his room to Keenan's car where they made him take two sleeping pills and ordered him to lie down in the rear seat of the car and place a black cloth mask over his eyes. It was snowing heavily. They drove north into Nevada on Highway 54 for about half an hour during which time Sinatra, Jr. was led to believe, from a conversation between Keenan and Amsler staged for the victim's benefit, that they were parolees "risking a jail sentence for twenty bucks" and that he was being taken as a hostage so that they could make their getaway and that they were going to release him [R.T. 435-440, 449, 526-548, 2243, 2736, 3176, 3355, 4076-4077; Ex. 1, Ex. 4, Ex. 58, Ex. 59].

John Foss meanwhile had the police alerted. As they approached a police roadblock Sinatra, Jr. was told "we are coming to a roadblock. You lie in the back seat there and pretend that you are asleep and play it cool and nobody will get hurt." It was after 9:00 p.m. They were driving on a deserted unlighted road in a blinding snowstorm. They stopped the car several

hundred yards short of the roadblock, appellant Amsler left the car and, as the evidence showed, he panicked and hid in a snow-bank. Keenan threw his gun away and as his car was approached by Nevada police officers, Keenan busied himself with removing his tire chains. Amsler had kept his gun. Sinatra, Jr. could not see Amsler and Keenan after they got out of the car and could only hear voices. Sinatra, Jr. was in constant fear for his life had he failed to follow directions and just before the roadblock did not know that Keenan had thrown away his gun [R. T. 439, 545-548, 559, 633, 647-648, 939, 949, 1424-1426, 2740-2741, 3054, 4073-4074, Ex. 4, Ex. 27].

After police officers had looked the car over and left, Keenan told Amsler to get into the trunk of the car. Amsler obeyed and they proceeded to the roadblock where they were stopped for a few seconds. Then they drove south on Highway 395 through Nevada and on to the Mason Avenue house in Canoga Park, California, where Sinatra, Jr. was taken on December 9th about 9:00 a. m. the next morning and held captive. Sinatra, Jr. was told for the first time on December 9th about 9:00 a. m. at the Mason Street House that he was involved in a "major kidnapping", that its purpose was to obtain money from his father and that he would be held captive by Keenan, Amsler and Irwin until the money was delivered [R. T. 559, 572-576, 2736-2747, 2779, 4076-4077].

Irwin, during the time Keenan and Amsler had been at Stateline and enroute to the Mason Avenue hideout, had been in contact by telephone with Keenan. After Keenan and Amsler

arrived with the victim at the Mason Avenue hideout, Keenan telephoned Irwin, told him they had Sinatra, Jr. and to meet them at the Mason Avenue house. When Irwin arrived he agreed to make the ransom calls to Sinatra, Sr. for which Irwin was to receive a $50,000 share of the ransom. Appellant Amsler was also to receive $50,000 for his part in the kidnapping. Keenan and appellant Irwin drove to a car rental agency at the Beverly Hilton where Keenan rented a car and about 6:00 p.m. Keenan drove back to Stateline to check out of the room which Keenan and Amsler had occupied at Harvey's Hotel [R.T. 2049-2054, 2414, 2736-2744, 3070, 3825-3828, Ex. 13A, Ex. 13B, Ex. 13C, Ex. 26L, Ex. 37C, Ex. 58, p. 8, Ex. 59, Ex. 61; see Overt Acts #9 and #10, Vol. II, C.T. 3].

C. THE RANSOM CALLS.

Sinatra, Sr., when he heard on the evening of December 8th that his son had been kidnapped, flew from his home in Palm Springs to the Mapes Hotel in Reno, Nevada where he met F.B.I. agents. Keenan had given appellant Irwin instructions as to the ransom demand telephone calls to be made to Frank Sinatra, Sr. Prior to receiving the telephone calls herein referred to, Frank Sinatra, Sr. had consented in writing, with his counsel's approval, to the recording by the F.B.I. of any calls he received. Following the telephone call from Irwin to Reno at 4:45 p.m. on December 9th (at which time Irwin told Sinatra, Sr. that his son was in Irwin's custody), Irwin, assisted by Amsler, on December 10th

made the following telephone calls from the Mason Avenue house, where he was standing guard over the victim, who was held captive nearly fifty-two hours. These calls related to the demand for ransom for the release of Sinatra, Jr. [R. T. 1318-1330, 3837, 3847-3852, Ex. 61; see Overt Act #12, Count One of the indictment, Vol. II, C. T. 4]. [A summary of the ransom demand calls indicating the time of the call, party called, source of call and subject discussed is attached as appellee's Appendix C].

(1) At 9:05 a. m. Irwin to Sinatra, Sr. at the Mapes Hotel, Reno, Nevada. The father was allowed to speak with his son and was told to expect further calls [R. T. 1320, 1674-1677, 3833, 3840-3842, Ex. 40F, Ex. 61, p. 14, 14, Ex. 160. See Overt Act #13 of Count One and Count Three of indictment, Vol. II, C. T. 4, 6].

(2) At 11:40 a. m. Irwin to Sinatra, Sr. at the Mapes Hotel. Sinatra, Sr. was not available and the call was taken by his attorney who was told that there would be a call later [R. T. 3845, 1680, Ex. 168, Ex. 40F, Ex. 61, p. 15. See Overt Act of Count One of indictment, Vol. II, C. T. 4].

(3) At 11:50 a. m. Irwin to Sinatra, Sr. at the Mapes Hotel at which time Sinatra, Sr. was told to go to Ron's Service Station. Sinatra, Sr. complied [R. T. 3845, 1682, 1685, 1687, Ex. 40F, Ex. 162, Ex. 61, p. 16. See Overt Act 15 of Count One of indictment, Vol. II, C. T. 4].

(4) At 12:28 p. m. Irwin to Sinatra, Sr. at the Mapes Hotel. Sinatra, Sr. 's attorney was told of the mistake in address as to Ron's Service Station (being located in Carson City rather than Reno) which the caller had given Sinatra, Sr. [R. T. 3850, 1682, 1687-1688, Ex. 40F, Ex. 169, Ex. 61, p. 16. See Overt Act #16 of Count One of indictment, Vol. II, C. T. 4].

(5) At 12:50 p. m. Irwin to Sinatra, Sr. at Ron's Service Station, Carson City, Nevada, and demand for ransom of $240,000 in specified denominations. Frank Sinatra, Sr. was told to go to Oxoby's Station in Carson City where he would receive another call. Again Sinatra, Sr., following instructions, went to Oxoby's Station. F. B. I. agent Elson was with Sinatra, Sr. [Ex. 180, R. T. 3850, 1335-1341, Ex. 40F, Ex. 48. See Overt Act #17 of Count One and Count Four of indictment, Vol. II, C. T. 4, 8].

(6) At 1:10 p. m. Irwin to Sinatra, Sr. at Oxoby's Station when Sinatra, Sr. was told to obtain a courier to handle the ransom payment. He was asked the telephone number of Mrs. Nancy Sinatra at Bel Air, California and was told that he would be called again at 9:00 p. m. at the home of Mrs. Sinatra in Bel Air. Sinatra, Sr. left Reno with the F. B. I. and went to the Bel Air home of Mrs. Sinatra [R. T. 1341-1345, 3840, 3842, 3845, 3851, 3898, 3224-3229, Ex. 40F, Ex. 61, pp. 17, 18. See Overt Act #18 of Count One and Count Five of indictment, Vol. II,

C. T. 3, 9].

(7) At 9:26 p. m. Irwin to Sinatra, Sr. at Mrs. Nancy Sinatra's residence. Sinatra, Sr. was told to go to the Standard Station at Camden and Santa Monica Blvd., Beverly Hills, California where he would receive the next call. He complied [R. T. 1349, 1714-1717, Ex. 61, p. 19. See Overt Act 19 of Count One of indictment, Vol. II, C. T. 4].

(8) At 9:57 p. m. Irwin to Sinatra, Sr. at the Standard Station at Camden and Santa Monica Blvd. in Beverly Hills when Sinatra, Sr. was told to have the courier with the money ($240,000) go to a specified telephone at Los Angeles International Airport where the courier would be contacted. The caller would identify himself as "John Adams" and the courier would respond as "Patrick Henry". Sinatra, Sr. arranged for the ransom money to be delivered by an F. B. I. agent who was the courier [7 R. T. 1350-1353, 1326, Ex. 61, p. 19. See Overt Act #20 of Count One of indictment, Vol. II, C. T. 4].

D. RECEIPT OF THE RANSOM MONEY

During the period that appellant Irwin had made the series of ransom calls to Nevada, Keenan had checked out of Harvey's Hotel in Lake Tahoe and had returned to the Mason Avenue house at about 9:00 p. m. on December 10. Irwin was to guard the victim while Keenan and Amsler picked up the ransom money. Following

instructions by telephone which Keenan gave to an F. B. I. agent who was acting as courier, both having identified themselves by the fictitious names selected by Keenan, the ransom money was left between two buses parked at a Texaco Station about 12:25 a. m. the morning of December 11. At about that time appellant Amsler was dropped off at the Texaco Station to pick up the ransom. Amsler panicked and ran off without picking up the money. Keenan picked up the ransom money about 12:45 a. m. and called appellant Irwin at the Mason Avenue hideout, told him Amsler had disappeared, that he (Keenan) had picked up the money himself and told Irwin to wait with Sinatra, Jr. until Keenan arrived. Appellant Irwin decided not to wait and drove Sinatra, Jr. blindfolded to the Mulholland Drive turnoff on the San Diego Freeway and released him. Sinatra, Jr. walked towards his mother's home and was picked up by a Bel Air patrolman who returned him to his parents' home. The victim testified that at no time during the fifty-two hour period following the kidnapping was he ever convinced that he could have successfully escaped without endangering himself or someone else's life [R. T. 588-591, 600-606, 1339, 1568-1588, 2745-2746, Ex. 40F, Ex. 167, Ex. 58, pp. 9-10, Ex. 61, Ex. 78, Ex. 80. See Overt Acts #21, #24, #25 and #26 of Count One of indictment, Vol. II, C. T. 4, 5].

Over the next several days appellant Amsler met Keenan at the home of Keenan's mother and Amsler and Keenan then went to Irwin's house and gave Irwin his $50,000 share of the ransom. Keenan and appellant Amsler made arrangements to rent a house in Glendale to use as a hideout. Keenan and Amsler bought a car which they took to appellant Irwin's house. Irwin out of fear of apprehension fled the city in this car and headed South. He stopped overnight on December 12 at his brother's home in San Diego. It was from his brother's home that he called the F. B. I. the next morning, on December 13, and offered to give himself up. He had most of his share of the ransom with him. Keenan was arrested about 11:00 p. m. that night and assisted in leading the F. B. I. to Amsler who was arrested about an hour later at Roger Dier's residence where the major portion of the ransom money was recovered [R. T. 2418-2427, 2289-2299, 3418, 3420, 3597-3598, Ex. 61, pp. 24-26, Ex. 58. See Overt Acts #27 and #28 of Count One and Count Six of indictment, Vol. II, C. T. 5, 10, R. T. 2783, 2691, 2748-2752, Ex. 78, R. T. 2545-2546, Ex. 85C, Ex. 85D, R. T. 2548-2552, 2564-2569, 2583, 2587-2588, 2607, Ex. 85C, Ex. 85D].

E. IRWIN'S ADMISSIONS

Irwin's brother, a retired navy veteran and school teacher, testified that on the morning of December 13th, Irwin told him "that he had become involved in the Sinatra kidnapping and that he had been carrying it and was sick and tired of it and wanted to turn

himself in and be through with it" [R. T. 2289]. He told his brother, "I have some of the money out in my car" and " . . . I am the one who made all the telephone calls to Frank, Sr. . . ." [R. T. 2292]. Before calling the F. B. I. Irwin's brother suggested that Irwin contact an attorney but they were not able to reach him. They then decided to call the F. B. I. [R. T. Vol. I January 27 & 31, 1964, pp. 47, 50]. Irwin and his brother then discussed the "best way to terminate his participation in this whole business" and his brother told him to " . . . call the local F. B. I. and let them take care of it". Irwin's brother sometime between 8:15 and 8:30 a. m. [R. T. 2295] placed the call from his house to F. B. I. agent Mitchell with appellant Irwin on the extension phone [R. T. 2293], identified himself to agent Mitchell and told Mitchell " . . . that it was not any kind of crank call or a hoax, that it was an actual fact that my brother had become involved in the Sinatra kidnapping, he wanted to surrender himself . . .". Appellant Irwin broke into the conversation and told the F. B. I. over the phone that he had some money from the kidnapping in the automobile parked in front of the house. Irwin then telephoned his wife and told her he was "surrendering voluntarily" [R. T. 2411].

At about 9:00 a. m. F. B. I. agents Mitchell and Moore arrived at the house [R. T. 2296-97]. Mitchell identified himself to Irwin and his brother as an F. B. I. agent. Irwin gave Mitchell the keys to his car and told Mitchell "inside the station wagon you will find the money, the share of the money that was given to me". At that point Mitchell advised Irwin that he did not have to make a

statement and that any statement he did make could be used against him in a court of law and that he had the right to consult an attorney if he desired [R. T. 2409]. Irwin said he didn't want an attorney, that what he wanted to do was to "straighten out his relationship to the Sinatra case" [R. T. Vol. I, January 27, 1964, pp. 57, 103].

Accompanied by appellant Irwin, agent Mitchell removed two suitcases and an attache case from the car. Irwin told him the attache case contained the money. Mitchell opened it, observed it was "filled with currency" then closed it and handed it to another agent who had arrived at the scene [R. T. 2410-2411, Ex. 42].

Irwin told Mitchell in his brother's presence that he " . . . wanted to make a clean breast of this situation, that he had informed his wife by telephone that he had called the F. B. I. to advise them that he was surrendering himself" [R. T. 2411].

About 9:10 a. m. Irwin agreed to accompany F. B. I. agents Mitchell, Moore and Flynn to the San Diego office of the F. B. I. The trip took between 15 and 20 minutes [R. T. 2411-2412, 3673]. During the ride, Irwin reiterated that he wished to "make a clean breast of this matter" but he did not want to name the other individuals that he knew were involved. He then made a series of admissions covering the principal facts as to his participation in the crime including the fact that he was prevailed upon to participate in the crime, had made all the telephone calls to the victim's father, Frank Sinatra, Sr., and had come into possession of nearly $50,000 which was in the attache case [R. T. 2414-2418, Ex. 42].

They arrived at the F. B. I., San Diego office, at about

9:30 a.m. at which time, in the garage area of the F. B. I. office building, he permitted the F. B. I. to search him for harmful weapons or drugs at which time he turned over to the F. B. I. a gold signet ring which he said belonged to Frank Sinatra, Jr. which he had promised he would return to him. Irwin was then taken upstairs into an office area where he was seated. Prior to interviewing him shortly before 10:00 a.m. he was advised of his rights, i.e. that he did not have to make a statement, that anything he said could be used against him, and of his right to consult an attorney. Irwin acknowledged he had been advised of his rights. There were numerous "breaks" throughout the period of the interview for coffee, toilet relief, lunch, dinner, etc. The period of actual questioning covered approximately 3-1/2 to 4 hours [R. T. 2419-2421, 2448, Ex. 34, Vol. I, R. T. January 27, 1964, 118-124, 128, 151].

Three F. B. I. stenographers took dictation from Irwin and agents Field and Armstrong. The contents of a 27-page statement were transmitted to the F. B. I. office in Los Angeles. The completed statement was typed up by approximately 10:00 p.m. that evening. It was handed to Irwin who was asked to read it. Irwin declined to read it at that time. He decided to wait until the next day. At about 10:00 p.m. Irwin went to another room in the F. B. I. office building where a couch was provided and where he slept a few hours. A few minutes before 3:00 a.m. Irwin was escorted from the F. B. I. office to the office of the U. S. Commissioner in San Diego where he was arraigned at 3:00 a.m. The U. S. Commissioner advised him of his rights and bail was fixed. At about 3:20 a.m. he

was booked at the San Diego County Jail [R. T. 3674-3675].

At 7:30 a.m. F. B. I. agents interviewed Irwin at the San Diego County Jail. The 27-page typed statement Irwin then read. He made corrections on two pages which were transmitted to the F. B. I. office, retyped, returned to Irwin, read and approved by him. He then signed the statement about 11:00 a.m., initialling each page and all corrections [Ex. 61, Ex. 90, R. T. 2453-2459, Vol. I, R. T. of January 27 and January 31, 1964, pp. 53-70, 72-73, 77-78, 99-107, 118-130, 146-153].

F. AMSLER'S ADMISSIONS

At about midnight of the same day that appellant Irwin telephoned the F. B. I. in San Diego, agents, accompanied by Keenan, found appellant Amsler at Roger Dier's apartment in Los Angeles. Keenan had been arrested á little over an hour before, about 11:00 p.m., and had assisted the F. B. I. in locating Amsler. While the F. B. I. agents were in the apartment and after Keenan had found and turned over substantial portion of the ransom money, Amsler was placed under arrest at which time he was advised of his rights including his right to counsel. He was not handcuffed. The time of Amsler's arrest was shortly after midnight on December 13 [Vol. II, R. T. January 27, 1964, 193-223, 267-277, Ex. 58, R. T. 2567-2569].

Keenan and Amsler were driven to the Los Angeles office of the F. B. I. During the ride Amsler told the F. B. I. agents how he and Keenan were able to get through the roadblock and that

Keenan had given him a gun which he, Amsler, had held on Sinatra, Jr.

Amsler and the F. B. I. agents arrived at the F. B. I. offices shortly after 1:00 a. m. where Amsler was turned over to other agents for photographing and finger printing. Agent Simon, between 1:30 and 2:00 a. m. called the United States Attorney and the United States Commissioner. A complaint was prepared against all three defendants and the Commissioner agreed to come down for the arraignment as soon as he could although he was not well. Amsler was interviewed starting about 2:10 a. m. when on his request he was given cigarettes and refreshment. At 2:22 a. m. the admonition as to his rights, including the right to counsel, was reiterated. The interview continued for approximately 45 to 50 minutes at which time F. B. I. agent Russell began preparation of the statement which Amsler read, corrected, initialled and signed about 3:25 a. m. No threats or promises were made to Amsler. Amsler testified at the trial that the statements he made which are contained in a two-page statement in his own handwriting were made of his own free will and that he was not subjected to pressures, threats or promises [Vol. II, R. T. January 27, 1964, 200-214; R. T. 2574, 2725-2728, 2736-2737; 3119, 3174-3175, Ex. 59].

At about 3:32 a. m. Amsler was taken before the U. S. Commissioner, arraigned on the complaint, advised of his rights and bail was fixed. Following his arraignment Amsler was taken to the detective headquarters of the Los Angeles County Sheriff's office, arriving there at 4:20 a. m. The F. B. I. agents interviewed him,

after he was given water and a carton of milk, until about 5:30 a. m. Shortly after the F.B. I. left Amsler, Amsler retained counsel who, on several occasions, advised Amsler to continue to cooperate with the F. B. I. [R. T. 2720-2722, 2738-2756, Vol. II, R. T. January 27, 1964, 232-257].

G. KEENAN'S ADMISSIONS

When Keenan was arrested in La Canada, California about 11:00 p. m. on December 13, an F. B. I. agent advised him of his rights, i. e. that he did not have to make any statements, that if he did it could be used against him and of his right to counsel. Keenan admitted the kidnapping and told the F. B. I. agents he had left the major portion of the ransom money at Roger Dier's apartment in Culver City where he had stayed the previous night. He volunteered to direct the F. B. I. to the location. Enroute he made a series of admissions as to the crime. When they arrived at the Dier apartment in Culver City at Keenan's request the F. B. I. provided him with a quart of milk. He told the F. B. I. agents that Amsler had spent the previous night with Keenan at the Dier apartment. Once they were in the apartment Keenan volunteered to get the ransom money contained in a tin box and paper bag. Dier and Keenan had executed a waiver of search of the apartment [Vol. II, R. T. January 27, 1964, 194-209, R. T. 2564-2601].

Keenan about half an hour after arriving at Dier's apartment was driven to the Los Angeles office of the F. B. I. where they arrived shortly after 1:00 a. m.

Agent Simon, between 1:30 and 2:00 a. m. contacted the United States Attorney and U. S. Commissioner (see supra, p. 31). Keenan was interviewed starting about 1:35 a. m. At the inception of the interview he was advised of his rights and so acknowledged. The interview was interrupted for fingerprints and photographing and toilet relief. An agent took notes of the interview. An eleven page statement in an agent's handwriting was prepared which Keenan read and corrected in several particulars. He then initialled the corrections, each page of the statement and signed the statement. About 3:32 a. m. Keenan was taken before the U. S. Commissioner, arraigned on the complaint, advised of his rights and bail was fixed. No threats or promises were made to Keenan and Keenan so acknowledged.

Following his arraignment Keenan was taken to the detective headquarters of the Los Angeles Sheriff's office where he was interviewed by the F. B. I. for a little over an hour. On at least two occasions after December 14, and after Keenan retained counsel, his attorney advised Keenan to cooperate with the F. B. I. and to "furnish any information he could about the matter" [Vol. II, R. T. January 27, 1964, pp. 267-275; R. T. 2620-2640, Ex. 58].

V

ARGUMENT

A. THE DISTRICT COURT DID NOT LACK JURISDICTION BECAUSE THE JUDGE WHO PRESIDED OVER THE TRIAL AND HIS STAFF WERE OF A DIFFERENT DISTRICT.

Appellant Amsler asserts that "the trial and all proceedings had were void for lack of jurisdiction of the trial court because the trial, as such, with an Oregon judge and an Oregon staff maintaining the court, was not a trial within the state and district where the alleged crime was committed . . ." [Amsler Op. Br. pp. 19-26].

This contention is devoid of merit and the trial judge properly so ruled, finding that under Acts of Congress Title 28 U. S. C. primarily §292(b), it is provided as follows:

> " . . . the chief judge of a circuit may in the public interest designate and assign temporarily any district judge of the circuit to hold a district court in any district within the circuit. The Chief Justice's Advisory Committee upon assignment of District Judges, primarily in the field of inner-circuit assignments dealing as well with intra-circuit assignments of District Judges, has provided that a District Judge of the United States owes the primary duty to his own district and then under the Acts of Congress a secondary duty to the other districts

within his own circuit and then thirdly, where his services might be required by the Chief Justice, in other circuits and in other districts of other circuits."

On August 6, 1963 Chief Judge Chambers issued this designation:

"Whereas in my judgment the public interest so requires, now, therefore, pursuant to the provisions of §292(d), 28 U.S.C., I do hereby designate and assign the Honorable William G. East, United States District Judge for the District of Oregon, to hold a district court in the Southern District of California during the period beginning January 2, 1964, and ending January 31, 1964, and for such further time as may be required to complete unfinished business." [Court's Exhibit No. 1, Vol. A, Reporter's Transcript of Proceedings, January 20, 1964, pp. 2-6.]

Pursuant to the rules adopted by the judges of this court and the provisions of paragraph 8 of said order filed February 10, 1953 it was ordered that the subject case be transferred for all purposes to the Honorable William G. East sitting by general assignment in this district under provisions of Title 28 U.S.C. §292(b) [Court's Exhibit No. 2, Reporter's Transcript of Proceedings, January 20 at pp. 2-7, C.T. 219].

Appellant Amsler in effect challenges the power of congress

to provide that the judges from one district perform functions in another district, attacking the unconstitutionality of Title 28 U.S.C. §292. He cites no case so holding. This is not surprising in that the power of Congress to provide that judges from one district perform functions in another district has, on the few occasions on which it has been challenged, been sustained. McDowell v. United States, 159 U.S. 596, 598 (1895); Lamar v. United States, 241 U.S. 103 (1916). See also Judge Yankwich's article entitled, "Assignment of Judges to Other Districts", 3 F.R.D. 481. Appellant Amsler's counsel conceded in the court below that he was able to find no authority to the contra and he has cited none to the court here [Reporter's Transcript of Proceedings, January 20, 1964 at p. 8; Reporter's Transcript of Proceedings of April 6, 1964, p. 7]. As to Amsler's argument that the Oregon clerk was not authorized in California to administer oaths at the time that oaths were administered to the prospective jurors, this court should take note of the fact that the trial judge "out of an abundance of precaution" himself administered the oath to the jury [Reporter's Transcript of Proceedings, February 11, 1964, pp. 4-5].

B. THE INDICTMENT WAS NOT DUPLICITOUS.

Appellant Amsler contends that the indictment is duplicitous, arguing that Title 18 U.S.C. §1201, in effect, repealed Title 18 U.S.C. §371 [Amsler Op. Br. pp. 57-59; R.T. 3981-3982]. This contention is without merit. Defendants were charged under Title

18 U.S.C. §371, which carries a lesser penalty than the conspiracy provision in §1201. Obviously Title 18 U.S.C. §1201 cannot be said by implication to have repealed 18 §371 [R.T. 3982], United States v. Bazzell, 187 F.2d 878 (7th Cir. 1951), cert. den. 342 U.S. 849, 889 (1951). Furthermore, §1201(c) of Title 18 deals only with a conspiracy as to interstate transportation; whereas the indictment charges, in Count One under 18 U.S.C. §371, a conspiracy in violation of 18 U.S.C. §875(a) i.e. transmitting in interstate commerce communications demanding and requesting ransom and reward for the release of kidnap victim Frank Sinatra, Jr. and in violation of Title 18 U.S.C. §1202 i.e. receiving, possessing and disposing of ransom money to be delivered for the release of kidnap victim Frank Sinatra, Jr. after he was kidnapped and transported in interstate commerce. Neither of these offenses is covered in the conspiracy provision of 18 U.S.C. §1201 [R.T. 3283-3284; Reporter's Transcript of April 6, 1964, p. 34].

Thus the statutes in question describe different offenses. Repeals by implication are not favored. See Cohen v. United States, 201 F.2d 386, 393 (9th Cir. 1953).

Appellant Amsler's reliance on Kotteakos v. United States, 328 U.S. 750 (1946) [Amsler's Op. Br. pp. 58, 59] is misplaced. In Kotteakos the indictment alleged one conspiracy. The proof showed eight separate conspiracies connected only by the presence of one man in each. The Government conceded the variance in proof which the Supreme Court held was prejudicial to the defendants. Kotteakos, supra, p. 776. Kotteakos, obviously, is not in

point.

C. THE COURT DID NOT ERR IN DENYING DEFENDANT'S REQUEST FOR NAMES AND ADDRESSES OR PROSPECTIVE JURORS AND WITNESSES PRIOR TO TRIAL.

Appellant Amsler alleges that the court committed prejudicial error in refusing to give the defendant the names and addresses of all prospective jurors three days prior to trial under Title 18 U.S.C. §3432. He blandly assumes that "Title 18 U.S.C. §1202, the kidnapping statute, is a capital statute". [Amsler's Op. Br. p. 51]. This is not the law. Where the kidnapping victim is liberated by defendants in an unharmed condition, the death penalty could not have been imposed. The subject indictment did not plead that the victim was in any way harmed. Amsler's counsel conceded there was no injury to "anyone involved in this matter" [R. T. January 20, 1964 at p. 77]. Thus, no "capital offense" was involved within the meaning of §3432 of Title 18. Brown v. Johnston, 126 F.2d 727 (9th Cir. 1942), cert. den. 317 U.S. 627; United States v. Parker, 103 F.2d 857 (3d Cir. 1939), cert. den. 307 U.S. 642; United States v. Poitras, 339 F.2d 428 (4th Cir. 1964).

D. THERE WERE NO ILLEGAL SEARCHES OR SEIZURES AS CONTENDED BY APPELLANT AMSLER [4].

Appellant Amsler misstates the record in referring to a search of Irwin's house [See Motion to Suppress, Vol. I, January 27 and 31, 1964, p. 41]. He does not specify what evidence of such alleged search of the house was "illegally used against Amsler" or how. No reference is provided to the record as what evidence, if any, of such search was being offered against Amsler [Amsler's Op. Br. p. 72, Vol. I, January 27, 1964, p. 40]. Rule 41(e), Federal Rules of Criminal Procedure.

What the record does reflect is obvious probable cause - that Irwin told the F. B. I. over the phone that he had some of the ransom money in an automobile parked in front of his brother's house. After they arrived, he handed Agent Mitchell the keys to his car and told him that Mitchell would find Irwin's share of the ransom inside the station wagon [R. T. 2409-2411]. When Irwin arrived at the F. B. I. San Diego office, he consented to a search [R. T. 2419-2421, 2448; Appellee's Statement of Facts, supra, p. 29].

Following an extensive hearing on the Motions to Suppress, the trial court was satisfied there was no illegal search [R. T. Motion to Suppress, January 31, 1964, pp. 487-492. See generally Vols. I-IV, R. T. January 27 & 31, 1964]. There can be no question

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4/ We note that, although Amsler's argument is based on the "search of Irwin's house", appellant Irwin does not raise the point.

under the facts in this case as to probable cause. Brinegar v. United States, 338 U.S. 160 (1949); Husty v. United States, 282 U.S. 694 (1931).

E. THE COURT DID NOT ERR IN DENYING AMSLER'S MOTION FOR A TRIAL SEVERANCE.

Both appellants moved in the court below for a severance of the trial as to each defendant [C. T. 298]. The motions were denied by the trial court [R. T. February 10, 1964, p. 111]. We note that appellant Irwin does not include this as a specification of error nor does he argue this point in his appeal. Appellant Amsler's argument contains no reference whatsoever to the record and he makes no showing of any abuse of discretion other than his generalization that denial of a separate trial " . . . was of great prejudice, particularly to Amsler, in the light of the confessions and the activities of the other defendants" and "five tape recordings secured from Irwin and used against Amsler" [Amsler's Op. Br. p. 74]. He does not specify which tape recordings and in what particular they were "used" 5/ against Amsler and the only authority he cites for his contention is People v. Aranda which is a California State Court

5/ If appellant Amsler is referring to the tapes of recordings made during Irwin's interview with the F. B. I. on December 13, these were marked for identification during pre-trial hearings on the motions to suppress. They were never "used" in evidence at the trial. See appellee's argument infra relating to the admissibility of Irwin and Amsler's admissions and footnote at p. 67, infra.

decision and is not binding on this court which looks to the Federal Rules of Criminal Procedure and in this instance, Rule 14 thereof.

The grant or denial of a motion for separate trial is discretionary and, in the absence of an affirmative showing of abuse a refusal of severance is not assignable as error. United States v. Carter, 311 F.2d 934 (6th Cir. 1963), cert. den. 373 U.S. 915, No. 955 reh. den. 373 U.S. 954; Rule 14 Federal Rules of Criminal Procedure. Appellant Amsler here has made no showing of abuse as to refusal of severance.

F. THE TRIAL

1. THE JURY WAS PROPERLY IMPANELED.

Appellant Amsler contends that he was deprived of due process of law in that the manner and method of selecting the jury was not in accordance with the procedures used in the State of California, the state in which the alleged crime was committed but was in accordance with the so-called "Arizona system" not authorized under the procedure in the State of California and that the court erred in not allowing defendants twenty peremptory challenges, "kidnapping being a capital offense" [Amsler opening brief, pp. 26-30]. He cites no authority for these contentions. He objects to the system of simultaneous peremptory challenges which have been employed by Judge East and many other federal judges. He fails

to recognize decisions of the Supreme Court and this court which have sustained the very procedure of impanelment to which he objects. Pointer v. United States, 151 U.S. 396, 412 (1894); Hanson v. United States, 271 F.2d 791 (9th Cir. 1959); Carbo v. United States, 314 F.2d 718 (9th Cir. 1963), cert. den. 377 U.S. 953, reh. den. 377 U.S. 1010 (1964) [R.T. February 10, 1964, pp. 11-13, 99-111].

His contention that the defendants were entitled to twenty challenges rests on his assumption that kidnapping is a capital offense. This might be so were the victim harmed which must be pleaded. This was not the case here and the indictment contains no hint as to any harm to the victim [C.T. 2-5]. United States v. Poitras, 339 F.2d 428 (4th Cir. 1964)(See supra, p. 38).

2. THE TRIAL COURT DID NOT ERR IN LIMITING CROSS-EXAMINATION.

Appellant Amsler asserts that "at the outset of the trial, the court stated that only one counsel would be permitted to cross-examine a witness on a subject matter and that the other counsel could not repeat anything . . . covered by one counsel [Amsler's Op. Br. 76]. It is true that the court asked counsel "not to bring out repetitious matters" [R.T. 13-14] which is clearly within the trial court's discretion in the conduct of the trial.

Kohatsu v. United States, 351 F.2d 898

(9th Cir. 1965);

Beck v. United States, 298 F. 2d 622, 629
(9th Cir. 1962);
Enriquez v. United States, 293 F. 2d 788, 794
(9th Cir. 1961);
Robles v. United States, 279 F. 2d 401, 405
(9th Cir. 1960).

Moreover, the record amply reflects that the trial judge did not restrict counsel as to pertinent cross-examination [R. T. 13-14]. During pretrial, the Court stated:

> "Of course, each defendant will be honored with cross-examination of all Government's witnesses by his own attorney if he wishes, and the only restriction will be that there shall be no repetition of the same subjects." [Vol. IV, R. T. Pretrial, January 31, 1964, p. 507].

The Trial Court was, in fact, extremely liberal in allowing cross-examination by counsel for each defendant [R. T. 30, 43, 81, 89, 90-92, 120, 153, 155, 850, 889, 1206, 1221-1222].

Appellant Amsler's contention that the court erred "in failing to permit cross-examination and confrontation of the money . . . . The defense never having had an opportunity to see or examine the so-called ransom money" is unintelligible [Amsler's Op. Br. pp. 74-75]. What is meant by "cross-examination of the money"? There was no direct examination. Obviously appellant's counsel did not see the ransom money per se but its use as evidence [See R. T. 2171, appellant's sole reference to the record. See also

Vol. II, Motion to Suppress, January 27 and 31, 1964, pp. 161, 164-166]. The motion to suppress the ransom money referred to in the testimony was denied [Vol. IV, Motion to Suppress, January 31, 1964, pp. 492-493]. Appellant does not cite the court to any place in the proceedings below where appellant took any affirmative step to obtain the money. 6/

3. THE EVIDENCE IS SUFFICIENT TO SUSTAIN THE JUDGMENT OF CONVICTION AS TO APPELLANT AMSLER.

The Government's case as to appellant Amsler is abundantly sufficient to sustain the judgment of conviction against him both as to the facts and as a matter of law. 7/

Appellee's Statement of Facts as set forth in this brief extensively details the direct and circumstantial evidence against

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6/ As Government counsel pointed out, once money, which is identified by serial numbers, has been used in a criminal case, the practice is to have such money, through the Treasury Department, removed from circulation, destroyed and replaced with new currency [Vol. IV, R. T. January 31, 1964, p. 163].

7/ Appellant Irwin has not even questioned the sufficiency of the evidence to support his conviction other than his statement that the most damaging evidence against him, the admissibility of which he attacks, were his confession and tape recordings of his telephone calls in connection with the ransom money [Irwin's Brief, pp. 3, 6-7]. This election by Irwin not to attack the sufficiency of the evidence is understandable in light of the overwhelming quantum of evidence set out in appellee's Statement of Facts herein. This position of appellee's argument as to sufficiency of the evidence is addressed to Amsler's specifications of error Numbers IX and XVIII (Amsler's Op. Br. pp. IV, V, 52, 72).

Amsler, his participation in the conspiracy, including at least six of the overt acts in furtherance thereof, the interstate transportation of the kidnap victim, aiding and abetting in the transmission of the kidnap victim, aiding and abetting in the transmission by telephone of the ransom demands, and the receipt and possession of the ransom money, as charged in counts one through six of the indictment [See appellee's Statement of Facts, supra, pp. 15-33].

In light of Amsler's bold assertion that "the court erred in denying the motions for judgments of acquittal" and that "the verdicts are contrary to the law and the evidence [Amsler Op. Br. pp. 72, 52] it is significant to note that Amsler does not question the sufficiency of the evidence as to the conspiracy count, nor as to Amsler's participation in the conspiracy and the numerous overt acts in furtherance thereof, nor does he seriously question the sufficiency of the evidence as to counts three through six. Amsler's argument that there was " . . . no evidence of interstate transportation by Amsler prior to the consent of Frank Sinatra, Jr. to the transportation" is awkwardly bare in the light of the record which he appears to ignore [Amsler's Brief, pp. 49-50. See Appellee's Statement of Facts, supra, pp. 19-21, R. T. 2720-2748, 2759-2760, Exhibit 4, 4A, Exhibit 26 series, particularly 26C, 26E, 26G and 26K, Exhibit 27, Exhibit 59]. In making the above assertion with respect to lack of evidence of interstate transportation, he assumes consent. In arguing consent appellant Amsler points to the victim's "failure to make any outcry" and his "attitude to consent to the trip" [Amsler's Brief, pp. 50, 54]. Appellant

Amsler asserts that "Sinatra, Jr. was enjoying it, it was exciting to him" (no reference to the record is offered which supports such a statement) "he was consenting and going along with it" [Amsler's Brief p. 54]. What the record does reflect is that in answering some of defense counsel's questions, Sinatra, Jr. stated in effect that he "consented" to the acts and conduct of the defendants Keenan and Amsler in taking him from his room and transporting him [See Statement of Facts, supra, p. 20]. However, as the trial judge correctly instructed the jury:

> " . . . one of the special ingredients of the alleged crime of unlawful kidnapping as charged in count No. 2 is the lack of free-will consent on the part of the alleged victim, Frank Sinatra, Jr. to be taken, transported and removed from one state to another for the purpose of ransom. Therefore, when one of the exercise of his own free will and with knowledge of what is taking place with respect to his person voluntarily and willingly consents to accompany another, the latter cannot be guilty of kidnapping the former as long as such condition of free-will consent exists and in this connection you are instructed that a voluntary or free-will consent on the part of any person may be expressly or impliedly be given by him.
>
> "It has been pointed out to you that Frank Sinatra, Jr. in answering some of the defense counsel's questions stated in effect that he consented to the acts

and conduct of the defendants Keenan and Amsler of taking him from his room and transporting him. I point out to you that Frank Sinatra, Jr. also stated that he cooperated or complied with the defendant's request.

"Members of the jury it is for you to interpret these expressions of language and determine therefrom your interpretation of whether Frank Sinatra, Jr. acknowledged or expressed a free-will consent to be taken and transported as revealed in the evidence or he was then acting under some physical or mental restraint.

"You, as trial jurors, may or you may not find a free-will consent to have been quietly given from action as well as in action on the part of Frank Sinatra, Jr. when such action or in action, as the case may be, and as found by you on the part of Frank Sinatra, Jr., is viewed in the light of all of the surrounding facts and circumstances and with reason and common sense.

"If you find from the evidence that one or both of the defendants Keenan and Amsler threatened Frank Sinatra, Jr. at any given time with a pistol or pistols in a menacing manner or made commands or threats therewith, then you as trial jurors, may, if you wish, infer such menacing use or verbal threats of shooting,

pistol or pistols, if any, that the pistol or pistols were loaded with bullets and being then capable of causing bodily harm and I would comment that you could infer, if you wish, that Frank Sinatra, Jr. so inferred and acted accordingly." [18 R. T. pp. 4245-4247].

What were some of the surrounding circumstances and evidence from which the jury found lack of free-will consent by the victim? Or in appellant's words, why did the victim cooperate and fail "to make any outcry". The victim, nineteen years old, was seized at gunpoint [R. T. 527-528] at night. He saw the gun, he was placed in a car, not fully dressed and driving in blizzard weather was told by Amsler and Keenan that they were parolees "risking a jail sentence for twenty bucks" and that he was being taken as a hostage so that they could make their getaway and that they were going to release him [R. T. 544, 548, 3355, 4076-4077. See appellee's Statement of Facts, supra, pp. 19-20]. Appellant Amsler blandly asserts that Sinatra, Jr. "had consented to the trip" and that such consent "vitiates" any kidnapping [Amsler's Op. Br. p. 50]. The uncontradicted evidence was that Sinatra, Jr. was not told anything about being the victim of a kidnapping until they reached the hideout house at Mason Avenue in Canoga Park [R. T. 4076-4077; R. T. 574]. Appellant Amsler ignores the uncontradicted evidence that young Sinatra was fearful that his life was in jeopardy had he failed to follow directions [R. T. 633, 647-

648, 939]. Just before the roadblock the victim did not know that Keenan had thrown away his gun. Amsler had kept his gun [See Statement of Facts, supra, p. 20]. As far as the victim knew they were armed [R. T. 635]. Turning to the roadblock, at about the time Amsler panicked and left the car and hid in a snowbank and Keenan removed his tire chains, appellant Amsler asserts that Frank Sinatra, Jr. was "sitting there all alone in the back seat watching all of this performance" [Amsler's Brief, p. 53]. This is not the evidence in that after they got out of the car the victim could not see them. He could only hear voices [R. T. 551, 4076]. How did the victim know that Amsler and Keenan were not still armed [R. T. 2742. See also Government prosecutor's argument, R. T. 4076-4077]?

On appeal, when considering an attack upon the sufficiency of the evidence, the appellate court must view the evidence at trial in the light most favorable to the Government, together with all reasonable inferences which may be drawn therefrom. Noto v. United States, 367 U.S. 290 (1961); Glasser v. United States, 315 U.S. 60 (1942); Stein v. United States, 337 F.2d 14 (9th Cir. 1964); Byrnes v. United States, 327 F.2d 825 (9th Cir. 1964), cert. den. 377 U.S. 970. If the court then finds substantial evidence, it must presume the findings of the trier of fact to be correct and the judgment must be sustained. Noto v. United States, supra; Ingram v. United States, 360 U.S. 672, 678 (1959); Kotteakos v. United States, 328 U.S. 750, 763-764 (1946); Glasser v. United States, supra.

The credibility of witnesses and the weight to be given their testimony is a matter within the province of the trial court which has seen and heard the witnesses. Stoppelli v. United States, 183 F. 2d 391 (9th Cir. 1950), cert. den. 340 U.S. 864.

Appellee submits that the evidence presented at the trial and as further reflected in the Statement of Facts clearly was amply sufficient to sustain the jury's verdict of guilty as to appellant Amsler, as to all counts of the indictment.

4. THE COURT BELOW DID NOT ERR IN THE ADMISSION AND EXCLUSION OF EVIDENCE.

(a) As to the witness Bray, appellant Amsler contends [Amsler's Op. Br. p. 60] that the court erred in "refusing to allow Bray to answer this question:

> "Q. Isn't it a fact that he (Keenan) told you that you could not be prosecuted because Mr. Frank Sinatra, Jr. was cooperating?" [R. T. 61].

As Government counsel and the court observed, the witness had, in response to a previous question as to whether Keenan had told him that Frank Sinatra, Jr. would cooperate, answered in the negative [R. T. 2114]. The witness reiterated a negative reply [R. T. 2118]. As to the question quoted as having been put to Bray, appellant has miscited the record [Amsler's Op. Br. p. 60]. In any event, the question was obviously objectionable as to form.

As to the witness' answer, "I hope I am not linked with this", again the record is miscited although the answer would appear to be partially responsive.

(b) TAPE RECORDINGS OF TELEPHONE CALLS MADE BY APPELLANT IRWIN WERE NOT IN VIOLATION OF THE FEDERAL COMMUNICATIONS ACT AND WERE ADMISSIBLE.

Appellant Irwin states that the F. B. I. overheard on an extension telephone and recorded nine telephone calls made by Irwin to Frank Sinatra, Sr. in Reno and Carson City, Nevada and Los Angeles [Irwin's Op. Br. p. 27]. This is incorrect. There were no tape recordings of Irwin's calls to Ron's Service Station or Oxoby's Station in Carson City nor of the call to the Standard Station at Camden and Santa Monica [See appellee's Statement of Facts, pp. 22-24, supra; R. T. 4083-4085 and Appendix C hereto].

Irwin concedes that he made the calls [Irwin's Op. Br. p. 28, R. T. 3586-3587]. He does not question that Frank Sinatra, Sr. had consented to the recording by the F. B. I. of any calls he received [Irwin's Op. Br. pp. 28-32; R. T. 1319, 1330]. Although appellant Irwin questions Frank Sinatra, Sr.'s credibility as to his ability to recollect the content of the calls, Sinatra, Sr.'s testimony was clear and uncontradicted [R. T. 1330-1350]. Appellant Irwin ignores the fact that Frank Sinatra, Sr. made handwritten notes contemporaneously with the calls [Ex. 47, Ex. 48, R. T. 1332,

1336]. He also completely disregards the testimony of the F. B. I. agent and his notes as to the calls to which no objection was made [R. T. 1500, 1502, 1503, 1504, 1506, 1507, 1511]. It is clear, even disregarding the tape recordings, that there was sufficient evidence to sustain the verdict and judgment of conviction as to Counts Three, Four and Five [See Appellee's Statement of Facts, supra, pp. 21-27]. Moreover, Irwin's contention that the admission into evidence of the tape recordings violated the Federal Communications Act in that " . . . Irwin did not consent to the interception or publication of the contents thereof . . ." [Irwin's Op. Br. p. 29] is not supported by law. In Rathbun v. United States, 355 U. S. 107 (1957) the Supreme Court construed Section 605 sensibly in resolving the question presented here:

> " . . . The clear inference is that one entitled to receive the communication may use it for his own benefit or have another use it for him. The communication itself is not privileged, and one party may not force the other to secrecy merely by using a telephone. It has been conceded by those who believe the conduct here violates Section 605 that either party may record the conversation and publish it. . . ." Rathbun v. United States, supra, at p. 110.

Appellant Irwin argues that " . . . There is nothing in Rathbun to indicate that electrical recordings of conversations are not violations of the statute irrespective of the consent of one party

to such recording" [Irwin's Op. Br. p. 29]. The precise question raised here was settled in the Fifth Circuit against the appellant in a decision which analyzed the entire history of cases under Section 605 in determining whether an "interception" occurred within the meaning of the statute when a party to the conversation recorded a call without obtaining the permission of the other party:

> " . . . Taking a sensible view of it, the only difference between a person testifying to a conversation which he participated in or overheard and a recording of the conversation is that the recording has the advantage of furnishing trustworthy evidence (Assuming a showing that the tape has not been tampered with)."

Carnes v. United States, 295 F. 2d 598 (5th Cir. 1962), cert. den. 369 U. S. 861;

People v. Malotte, 46 Cal. 2d 59, 292 P. 2d 517 (1956) (per Traynor, J.).

This court has, on the several recent occasions when the question was raised, held squarely that Section 605 inapplicable in these circumstances.

Battaglia v. United States, 349 F. 2d 556 (9th Cir. 1965);

Lindsey v. United States, 332 F. 2d 688 (9th Cir. 1964);

Carbo v. United States, 314 F. 2d 718 (9th Cir. 1963), cert. den. 377 U. S. 953, reh. den. 377 U. S. 1010 (1964).

(c) ADMISSIONS BY APPELLANTS IRWIN AND AMSLER WERE LAWFULLY OBTAINED AND PROPERLY ADMITTED BY THE TRIAL COURT.

1) Appellant Irwin's Admissions.

Appellant Irwin contends that Irwin's "confession was unlawfully extracted and coerced during a period of unlawful detention in violation of procedural due process and the right to counsel and the confession should not have been admitted into evidence" [appellant Irwin's Op. Br. p. 8, Ex. 61]. He divides his argument into two branches: (a) that Irwin's confession was obtained during a period of unlawful detention in violation of Rule 5(a) Federal Rules of Criminal Procedure and (b) that the confession was "coerced in violation of appellant's right to due process of law and his right to counsel" [Irwin's Op. Br. pp. 6-26].

While not attacking the "voluntariness" of Irwin's confession appellant Amsler challenges its admissibility under Rule 5(a) and the Fifth Amendment. In this connection it should be noted that Irwin's admissions were offered and admitted against Irwin alone [Amsler Op. Br. pp. 45-47, R. T. 2464].

At the outset it should be observed that neither appellant makes any helpful reference to the voluminous pre-trial record and the extensive testimony heard in connection with the motions to suppress which encompassed some four volumes of transcript nor to the trial judge's illuminating comments at the time he denied the

motion [C. T. 16, 254 Vols. I-IV, inclusive, January 27 to 31, 1964, pp. 490-494]. Indeed appellant Irwin nowhere in his brief even mentions the proceedings in connection with the Motion to Suppress. Secondly, the term "confession", which both appellants employ, was in fact never used in the trial court by Government counsel or the trial court [see Judge East's comments at p. 493, Vol. IV pre-trial, R. T. January 31, 1964]. This becomes important in that we are not dealing here simply with a single "confession" but rather with a series of seven "confessions" made by Irwin at various times. In attacking only the seventh confession which was last in point of time, Irwin glosses over the first five confessions [See appellee's brief, pp. 57-58 infra]. 8/

Since the surrounding factual circumstances are of critical importance in evaluating appellant's contentions, it is essential at the outset to direct this court's attention to certain misstatements of fact or misleading statements which appear in appellants' opening briefs. As is more fully reflected in appellee's Statement of Facts concerning Irwin's admissions, the following are among the more flagrant assertions which are either untrue, unsupported or

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8/ As to when, during Irwin's detention, he was "arrested" was not determined by the trial court. The prosecutor acknowledged that he was under arrest "sometime during the day of the 13th" [Vol. IV, R. T. Motion to Suppress, p. 484]. Until such time as the serial numbers of the ransom bills taken from Irwin had, together with other leads, been checked out and until the F. B. I. knew it had jurisdiction (see infra p. 62) it may be argued that state law would apply. Under California law mere detention for questioning is not considered an arrest. People v. King, 175 Cal. App. 2d 386, 390 P. 2d 235 (1959); People v. Anguiramo, 198 Cal. App. 2d 426, 429, 18 Cal. Rptr. 132 (1961); 39 Cal. L. Rev. 99.

misleading; that the confession was "extracted by F. B. I. interrogators"; that "the F. B. I. embarked upon a thirteen hour period of continuous interrogation . . . beginning at 9:50 a. m. and continuing without interruption except for meals and toilet relief until 10:30 p. m. that night"; that "at the end of thirteen continuous hours of questioning on December 13, appellant still was not taken before a Commissioner"; that "after his appearance, appellant was still not able to sleep during the remainder of the morning, primarily because there was no bed in the room to which he was taken"; that " . . . there is nothing in the record to indicate any explanation by the Federal authorities for their failure to take appellant before a Commissioner who was presumably available in the same building in San Diego which houses the F. B. I. office"; that a United States Commissioner " . . . with certainty was readily available to agents Mitchell and Moore at 9:00 a. m. on Friday morning when appellant was taken into custody"; that " . . . clearly all admissions that followed arrival at the F. B. I. office resulted from differing degrees of inducement, and were hence not spontaneous"; that appellant's statement " . . . was also the result, not of free choice but of overbearing suggestion and pressure from the F. B. I. during a time when appellant was physically exhausted and when appellant requested, and was refused an attorney"; that "appellant requested that he be entitled to the assistance of counsel to review the written statement before he signed the same and that the F. B. I. refused such request and continued to pressure appellant to sign the confession" [appellant Irwin's Op. Br. pp. 6, 8-26] that "five tapes of

recordings were taken from Irwin outside of the presence of Amsler . . . and were later introduced in evidence at the trial of this case"; and that the statements of Keenan were introduced in evidence against Amsler. Neither statement is true [R. T. 2614, Vol. I, R. T. Motion to Suppress, p. 142; Amsler's Op. Br. pp. 46-48, emphasis added]. It is respectfully suggested that without reference to appellee's Statement of Facts this Court would be misled by the foregoing representations of appellants' counsel [See appellee's Statement of Facts, pp. 26-33, supra].

a) The "McNabb-Mallory" Rule is Inapplicable to Irwin's Confessions Which Were Properly Admitted by the Trial Court.

Appellant Irwin, in attacking the admissibility of Irwin's written confession fails to consider the legal effect of at least five earlier confessions. This is evident in his argument that " . . . even if appellant had made separate confessions, one on Friday and the other confessions after examination by the Commissioner, the second confession was the product of the first . . ." [Irwin's Op. Br. p. 14, emphasis added]. This is understandable as appellant seeks to establish that the post-arraignment confession was the product of an unlawful period of detention in violation of Rule 5(a) Federal Rules of Criminal Procedure which clearly was not true in this case. In point of time there were at least five confessions or series of admissions made by Irwin before he could be

considered to be under "arrest": (1) to his brother before the F. B. I. was called; (2) over the telephone to the F. B. I. before F. B. I. agents arrived; (3) to his brother and F. B. I. agents outside the Irwin house; (4) to the F. B. I. agents after Irwin volunteered to accompany them to the F. B. I. office and during the ride; (5) in the garage area of the F. B. I. building at the time Irwin consented to be searched [R. T. 2289-2297, 24-6-2418, 3677-3686, see appellee's Statement of Facts "Irwin's Admissions" at pp. 26-32, supra]. These were all spontaneous or voluntary pre-arrest admissions. It was during this time of Irwin's volunteered statements to his brother and the F. B. I. that Irwin let the 'cat out of the bag' [See Irwin's Op. Br. p. 14]. Even assuming arguendo there was any period of unlawful detention after Irwin was arrested sometime following his arrival at the F. B. I. offices, and assuming further that a delay in arraignment was not unavoidable or justified by the circumstances of the case, it is inconsequential since the confessions " . . . preceded the delay and thus could not have been its fruit". United States v. Gorman, 355 F. 2d 151, 155-157 (2nd Cir. 1965); United States v. Mitchell, 322 U. S. 65, 70-71 (1944).

As to the 27-page statement [Ex. 61] to which Irwin's brief is addressed, this was simply a voluntary re-affirmation of Irwin's pre-arrest "threshold" admissions. The statement was read, corrected and signed by Irwin after arraignment and not during any period of improper detention, assuming there was such a period. [See appellee's Statement of Facts, "Irwin's admissions" pp. 26-32, supra; R. T. 2453-2459, 3674-3675]. The question is thus one of

voluntariness. Feguer v. United States, 302 F. 2d 214, 251-252 (8th Cir. 1962); United States v. Mitchell, 322 U. S. 65 (1944); Jackson v. United States, 285 F. 2d 675, 679 (D. C. Cir. 1960), cert. den. 366 U. S. 941 (1961). The trial judge meticulously followed the procedure prescribed by United States v. Carnigan, 342 U. S. 36, 38 (1951) [Vols. I-IV, January 27-31, 1964, pp. 490-494, R. T. 4011].

There could be no clearer case than that of appellant Irwin as to his voluntary submission to questioning. United States v. Vita, 294 F. 2d 524 (2nd Cir. 1961). Here was a man whose sole desire was to "make a clear breast of it", who wanted to turn himself in and "be through with it", whose wish was to "straighten out his relationship to the Sinatra case" and who told his wife and testified at the trial that he was "surrendering voluntarily" [R. T. 3678. Appellee's Statement of Facts, "Irwin's Admissions" p. 26, supra]. It should also be noted that none of the admissions or confessions of Irwin which were admitted into evidence against Irwin were made by Irwin between the time of his arrest and arraignment. The five tapes taken by the F. B. I. during the interview on December 13 were never offered in evidence [R. T. 2614, 2394, Vol. I Motion to Suppress, p. 142]. In light of the foregoing, appellant Irwin's argument under Rule 5(a) is essentially irrelevant.

Even if we were to assume arguendo that any of Irwin's admissions received in evidence were not voluntary and were the product of the period between arrest and arraignment, the delay was not "unnecessary" within the meaning of Rule 5(a) and was

justified by the circumstances of this case. The Supreme Court recognizes in Mallory that " . . . the duty enjoined upon arresting officers to arraign 'without unnecessary delay' indicates that the command does not call for mechanical or automatic obedience . . ." citing as such a "circumstance" the situation where a story volunteered by the accused is susceptible of verification through third parties. Mallory v. United States, 354 U.S. 449, 451-452, 1 L. ed. 2d 1479 (1957).

In United States v. Vita, 294 F. 2d 524 (2nd Cir. 1961), the court in considering the application of Rule 5(a), stated at page 532:

> "We believe that there are also circumstances which may warrant a detention that is more than 'brief'; but when needed for investigation rather than merely repetitious interrogation, reasonable detention is permissible so long as certain safeguards are observed."

There is no indication in the record that appellant Irwin's detention was used to subject him to repetitious interrogation or that his admissions were other than voluntarily made [See appellee's Statement of Facts, supra, p. 26].

Where a defendant objects to the admissibility of a 'confession' on grounds that it was obtained during a period of illegal detention, it is usually the defendant's burden to show a violation of Rule 5(a). United States v. Walker, 176 F. 2d 564 (2nd Cir. 1949), cert. den. 342 U.S. 868 (1951). Since it is arguable that, as to Irwin, there was a 'detention' without an 'arrest' the Government shoulders the burden of explaining the reasonableness of such delay.

United States v. Vita, supra, at p. 534. This must be judged in the light of all the attendant circumstances.

The court in Vita detailed the criteria upon which the detention was reasonable:

> "We believe that when a continuing process of essential investigation is being carried out expeditiously, when the suspect is advised of his constitutional rights, and when there is no reason to believe that the procedures being followed are used merely as an excuse for delay during which a confession can be extracted, detention is not 'arrest' and in any event is not unnecessary, and an uncoerced confession so obtained is admissible."
>
> United States v. Vita, supra, at p. 534.

As Chief Judge Lombard said in the recent case of United States v. Cone, 354 F.2d 119, 126 (2nd Cir. 1965):

> "The fact is that in many serious crimes - . . . murder, kidnapping . . . the police often have no or few objective clues with which to start an investigation. A considerable percentage of those which are solved are solved . . . through statements voluntarily made to the police by those who are suspects. Moreover, immediate questioning is often instrumental in recovering kidnapped persons or stolen goods as well as solving the crime. . . ."

The case at bar was a major kidnapping case of great notoriety in which the law enforcement officers' concern was not merely the apprehension of one, but three suspects and the recovery of almost $240,000 ransom money. Their trial involved an area from Stateline California through Nevada to Canoga Park, California. On December 13 when the F. B. I. agents responded to the telephone call from Irwin's brother's house, the San Diego call was hundreds of miles removed from the place of the kidnapping. At the time Irwin showed them to the attache case "filled with currency", almost $200,000 of the ransom money had not been located. The serial numbers on all the bills found in Irwin's car had to be checked out with the F. B. I. in Los Angeles. Moreover, time was required to check out numerous 'leads' which had been received including those from Irwin, a person of unknown reliability. The gun which Keenan had thrown away was not found until the next day [R. T. 1462-1464]. Appellant Irwin glosses over this period of essential and time-consuming investigation which led to the apprehension of Keenan and Amsler and recovery of practically the entire ransom payment.

In the recent case of United States v. Gorman, 355 F. 2d 151, 155-157 (2nd Cir. 1965), the court stated that the agent was " . . . bound to inquire as to the facts in order to ascertain what other persons might be involved and where they and the stolen money might be found".

What difference did it make at that time whether

Commissioner Graydon was at her office or not? 9/ Agent Callister, explaining why Irwin was not arraigned earlier, testified as follows: ". . . during this period, Mr. Irwin had voluntarily accompanied us to our office, as he said, to straighten out his association with the Sinatra case. We were interviewing him, and at this time we were trying to get information from him which might assist us in locating the other two individuals who were involved . . . it was not until process had been filed in Los Angeles that I was able to make arrangements for the arraignment. And so when I was informed that process had been filed in Los Angeles, I immediately made arrangements to arraign him in San Diego. . . ." [R. T. January 27, 1964, pp. 108-109].

This was a Friday. The Commissioner's office and courts close at 5:00 p. m. This Court has held that delay occasioned by the unavailability of a Commissioner when the arrest occurs after the beginning of a weekend is reasonable. Williams v. United States, 273 F. 2d 781, 792, 798 (9th Cir. 1959), cert. den. 362 U. S. 951 (1960). Agent Callister received word from Los Angeles shortly before 3:00 a. m. on December 14 that arrangements were being made to 'file process'. He immediately arranged to have the U. S. Commissioner come to her office from her home and Irwin was arraigned at 3:00 a. m. [R. T. January 27, 1964, pp. 106-109]. Compare Bailey v. United States, 328 F. 2d 542 (D. C. Cir. 1964);

9/ Appellant Irwin misstates the facts in repeatedly representing that the U. S. Commissioner was available "with certainty" to the F. B. I. in the same building [Irwin's Op. Br. pp. 13, 17, 20, 24. See Vol. I, pre-trial, pp. 72, 73, 77, 105].

United States v. Mitchell, 322 U. S. 65 (1944).

Appellant Irwin relies on Morales and Ginoza, decided by this Court [appellant Irwin's Op. Br. pp. 13-24]. The facts in the instant case are clearly distinguishable. Appellant Irwin concedes that in Ginoza the facts were different and unlike this case. In Ginoza, there were no spontaneous admissions. Ginoza, until confronted by an informer after a period of "intensive interrogation" made no admissions [appellant Irwin's Op. Br. pp. 22-23]. Another basic difference is that in Ginoza there was no 'volunteered story', no leads to be checked out through other law enforcement officers or third parties. See United States v. Hall, 348 F. 2d 837 (2nd Cir. 1965); United States v. Gorman, 355 F. 2d 151, 155-157 (2nd Cir. 1965). Also, in Ginoza any possible doubt as to the availability of a Commissioner was precluded by the fact that an hour before Ginoza was booked it took officers only twenty minutes to find a Commissioner who executed a search warrant at 5:30 p. m. to search Ginoza's place of business. He was booked at 6:30 p. m. but was not arraigned until the following day.

Morales is also clearly distinguishable. Once the officers were inside Morales' house and were told he was using narcotics and shown his punctured and marked arms, it then became their duty to arrest him. Further, in Morales, a period of 14 hours in state custody was considered by the court as to reasonableness of delay [See Muldrow v. United States, 281 F. 2d 903 (1960)]. Morales was then interrogated by Federal officers in the same building as the U. S. Commissioner's office. Morales is further to be

distinguished in that he was told by agents that any cooperation he gave to the Government would be reported to the United States Attorney. Moreover, unlike Morales and Ginoza, appellant Irwin made (1) spontaneous admissions to his brother even before the F. B. I. arrived and to the F. B. I. before he agreed to accompany them to the F. B. I. offices; (2) he waived counsel after repeatedly being informed of his rights (Statement of Facts, supra, p. 28) and (3) he reaffirmed his threshold admissions by executing his 27-page statement after arraignment. Jackson v. United States, 285 F. 2d 675, 679 (D. C. Cir. 1960), cert. den. 366 U. S. 941 (1961); Mitchell v. United States, 322 U. S. 65, 69 (1944); Feguer v. United States, 302 F. 2d 214, 250-252 (8th Cir. 1962).

Furthermore, in Morales and Ginoza there was nothing in the record to indicate any explanation for the delay [appellant Irwin's Op. Br. pp. 17, 21]. This, of course, is not the case here [Vol. I, pre-trial R.T. January 27, 1964, pp. 108-109]. Rather, appellant Irwin's detention was for essential investigation expeditiously carried out, not for merely repetitious interrogation. Vita, supra, 532, 534; Hall v. United States, 348 F. 2d 837 (2nd Cir. 1965); United States v. Gorman, 355 F. 2d 151, 155-157 (2nd Cir. 1965).

2) Appellant Amsler's Admissions

As to appellant Amsler, the chronology of events, as

reflected by the record, between his arrest on Friday midnight and arraignment at 3:32 a. m., is the sufficient answer to appellant's attack on admissibility of Amsler's statement [Ex. 59; see appellee's Statement of Facts re appellant Amsler's admissions at pp. 30-32, supra]. Counsel for Amsler states that Amsler "denied that the confession and the interviews were free and voluntary" [Amsler's Op. Br. p. 48]. The record is to the contrary [R. T. 3174-3175, see opening paragraph Ex. 59]. In fact, Amsler's attorney after the F. B. I. interview was completed and the statement signed told Amsler to continue to cooperate with the F. B. I. [R. T. 2751, 2756].

3) Appellants Irwin and Amsler Fail to Make Any Showing That Their Statements Were Coerced.

Following an extended hearing on the Motions to Suppress and exhaustive testimony of numerous witnesses thoroughly cross-examined at which the prosecution offered proof, the trial court preliminarily ruled that the statements were not illegally taken from appellants 10/ [Vol. IV Motion to Suppress January 31, 1964 pp. 493-494]. The discretion in the trial court will not be disturbed on appeal in the absence of a clear abuse. Ortiz v. United States, 318 F. 2d 450 (9th Cir. 1963), cert. den. 376 U. S. 953. Clearly,

10/ The motion to suppress Keenan's statement was also denied. It was not offered against appellants Irwin or Amsler. Keenan is not an appellant having dismissed his appeal [R. T. 2394, 2614].

the appellants have made no such showing here.

4) Appellants Both Rely Upon Escobedo v. Illinois, 378 U.S. 478 (1964) and Massiah v. United States, 377 U.S. 201 (1964) Arguing That No Attorney for Appellants Was Present at the Time the Admissions Were Made. 11/

In Escobedo the admissions were made while the defendant was under arrest and although his attorney was in an adjoining room of the police station, each was affirmatively denied access to the other. In Massiah, the statements were obtained secretly during the accusatory stage of the proceedings after the defendant had been indicted and in the absence of and without notice to his retained attorney.

Here, on the other hand, neither Irwin nor Amsler had retained an attorney. Both had been effectively and repeatedly informed of their right to counsel, that whatever statement they made might be used against them, and of their right to remain silent [Statement of Facts, supra, pp. 26-32]. In Escobedo, the

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11/ Counsel for appellant Amsler refers to five tapes of recordings "taken from Irwin" and "introduced in evidence in the trial of this case". This is untrue as Amsler's own reference to the record reflects [appellant Amsler Op. Br. pp. 47, 74, Vol. I, pre-trial R. T. 142]. These tapes were marked for identification at the pre-trial hearing on the Motion to Suppress. They were never used in evidence at the trial [see appellant Amsler's List of Exhibits]. He also misstates the record that Keenan's statements were "introduced" against Amsler [Amsler's Op. Br. p. 48; R. T. 2614].

court noted that this was a "critical circumstance" which could be waived [Escobedo, supra, at pp. 491-492, f. n. 14]. If suspect is told of the right to consult counsel and makes no request or attempt to exercise that right before making incriminating statements, the resulting statements are admissible in evidence. United States v. Drummond, 354 F. 2d 132 (2nd Cir. 1965), cert. pending No. 1203 miscellaneous, this term; Davidson v. United States, 349 F. 2d 530, 534 (10th Cir. 1965); Hayes v. United States, 347 F. 2d 668 (8th Cir. 1965); Payne v. United States, 340 F. 2d 748 (9th Cir. 1965); Otney v. United States, 340 F. 2d 696, 702 (10th Cir. 1965); Jackson v. United States, 337 F. 2d 136, 139-141 (CA D. C. 1964), cert. den. 380 U. S. 935 (1965); see Pennsylvania v. Maroney, 348 F. 2d 22, 31-32 (3rd Cir. 1965). As to the period before arraignment the evidence is clear. Irwin had specifically declined to consult an attorney and had waived these rights [R. T. Vol. I, Motion to Suppress, pp. 57, 103, appellee's Statement of Facts, supra, pp. 26-32]. Although Irwin testified that at the time of signing the 27-page statement, "I told them I wanted a lawyer" and "They wouldn't let me have a lawyer", the F. B. I. log of activities at the jail on that date and F. B. I. agent Field's testimony are explicitly to the contrary [R. T. 3924, Ex. 90]. Notwithstanding Irwin's testimony as to his innocence, the jury found him guilty and the trial judge, at the time of sentencing, stated that he was satisfied that Irwin had testified falsely and had "participated in that testimony knowingly and wilfully" [R. T. April 6, 1965, pp.

50-52]. [12] As to Amsler, even after he had retained counsel, his counsel told him to continue to cooperate with the F. B. I. [R. T. 2751, 2756, Vol. II, Motion to Suppress, pp. 232-257. Appellee's Statement of Facts, supra, p. 32].

5. THE TRIAL COURT DID NOT ERR IN GRANTING A MOTION TO QUASH THE SUBPOENA ISSUED TO FRANK SINATRA, SR. AND IN REFUSING TO SUBPOENA JOHN HANSON UNDER RULE 17(b).

Appellant Amsler contends that the trial court's suppression of the subpoena issued to Sinatra, Sr. was a denial of " . . . the right of confrontation guaranteed by the Sixth Amendment . . ." of an "abuse of process" [Amsler's Op. Br. 37-43]. The record is the sufficient answer. Sinatra, Sr. called as a witness for the Government testified that none of the events related to the kidnapping were part of a publicity stunt or hoax of any kind [R. T. 1358-

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12/ Judge East referred the matter of the false testimony of appellants Irwin and Amsler to the Federal Grand Jury for the Southern District of California [R. T. April 6, 1964, p. 53]. In July, 1964, the Grand Jury returned a three-count indictment against Irwin's trial counsel Gladys Towles Root, Amsler's counsel George E. Forde and Keenan, Irwin and Amsler as unindicted co-conspirators charging violations of 18 U.S.C. §371 and 18 U.S.C. §1503. The court dismissed this indictment. The matter was thereafter presented to another Federal Grand Jury and in December, 1964, a five-count indictment was returned against the same parties and dealing with the same subject matter, charging a conspiracy to suborn perjury, commit perjury and obstruct justice, suborning the perjury of Amsler and Irwin and obstructing justice. This indictment was dismissed by the District Court on June 30, 1965 and the Government took an appeal which is now pending in this court.

1361]. He was cross-examined by counsel for Amsler and Irwin in these areas [R. T. 1361-1407] who indicated at the close of their examination that they had no further questions [R. T. 1375, 1400].

The defense thereafter did not seek to reopen cross-examination but sought and obtained a subpoena under Rule 17(b) [R. T. 1741-1744, 1832-1834; C. T. 100-103]. Thereafter Frank Sinatra, Jr. was called as a defense witness and no new areas were covered by defense counsel's examination [R. T. 634-938, 2937-56, 2975].

The trial court observed that the court had been called on to make a "totally unwarranted use of the process of this court" in recalling the witness Sinatra, Sr. The trial court asked defense counsel for an offer of proof with respect to Sinatra, Sr. which defense counsel objected to and on motion of the witness Sinatra, Sr.'s counsel the motion to quash was granted [R. T. 2975-2984].

We will also deal here with Amsler's contention that the court erred in refusing Amsler a Rule 17(b) subpoena as to the witness John Hanson [Amsler's Op. Br. p. 59].

As to Amsler's affidavit in connection with the Rule 17(b) subpoena [C. T. 112-113] the court correctly pointed out that Amsler would testify in his own behalf under the showing made, and for him then to have a witness testify "as to extra-judicial statements seems to me to be merely the proof of the self-serving statements" [R. T. 2868]. Following Government counsel's suggestion the court did not rule on the application at that time [R. T. 2868-2870]. Thereafter, Amsler took the stand and testified at length in the area covered by the affidavit [C. T. 112-113; R. T.

2993-3037]. The court sustained the Government's objection as to the conversation which Amsler related he had with Hanson as to what Keenan had told Amsler [R. T. 3007]. The court accordingly denied Amsler's request for a subpoena for the witness Hanson [R. T. 3038]. The court had previously been furnished by the Government F. B. I. report of an interview with Hanson, a copy of which was delivered to the defense [R. T. 3038; C. T. 5, Ex. 11]. As it happened subsequently the Government called Hanson as a rebuttal witness [R. T. 3935-3952]. The Government prosecutor on direct examination, examined on the witnesses' knowledge of the matters suggested by the affidavit filed by Amsler's counsel [C. T. 112-113; R. T. 3937-3940]. The perfunctory cross-examination of Amsler's counsel is difficult to square with the representations on his affidavit [R. T. 3942-3952; C. T. 113].

As to the court's disposition of both subpoenas, it can hardly be said that Amsler did not have "the right of confrontation of the witness" [Amsler's Op. Br. p. 39] or that he could "not . . . safely go to trial without the witness . . ." [Rule 17(b), Federal Rules of Criminal Procedure].

These are both clear instances within the discretion of the District Court relating to requests of an indigent defendant under Rule 17(b) to prevent the abuses often attempted by a defendant. Reistroffer v. United States (C. A. Iowa, 1958), 258 F. 2d 379, 3 L. ed. 301, reh. den. 358 U. S. 927. The reviewing court will not disturb the trial court's exercise of discretion unless exceptional circumstances compel it. United States v. Zuideveld, 316 F. 2d 873

(7th Cir. 1963), cert. den. 376 U.S. 916. In the case at bar, the only circumstance which appears to be exceptional is that, although the defense advanced at the trial was that the kidnapping was a pre-arranged publicity stunt or hoax which the victim knew about before it occurred [Amsler's Op. Br. pp. 33, 39; R. T. 16, 21, 24, 28, 29, 4280-4281], there was not one iota of direct evidence to this effect - only defense counsel's statements [R. T. 4244-4245]. 13/

6. THERE WAS NO DENIAL OF APPELLANT'S RIGHT TO A PUBLIC TRIAL BY REASON OF AN ORDER EXCLUDING PHOTOGRAPHERS AND TELEVISION CAMERAMEN FROM THE COURTROOM AND ADJACENT CORRIDORS OF THE SECOND FLOOR.

Appellant Amsler contends that he was denied his constitutional right to a public trial because the district court "excluded all the television people and cameramen from the second floor of the Federal Building, where the trial was being held" [Amsler's Op. Br. p. 43]. Of course, appellant has misstated the facts. The order entered by the district judge did not preclude access to the courtroom or the corridors adjacent thereto of television people and cameramen as appellant contends. It was not cameramen and photographers who were precluded from the courtroom and adjacent

13/ At the conclusion of the trial, Judge East submitted to the Grand Jury the matter of the false testimony of the defendants, Irwin and Amsler [R. T. April 6, 1964, p. 53]. See footnote 12 at page 69, infra.

corridors, but rather "all forms, means and manner of taking photographs, or broadcasting or televising on or from the entire second floor or any part thereof . . ." [See order of the United States District Judges for the Southern District of California entered January 20, 1964, Appendix "A"].

The order entered by Judge East was based upon the order of January 20, 1964 entered by a majority of the judges of this court. That order was in part based upon Canon 35 of the Judicial Canons of the American Bar Association which provides:

> "Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs in the courtroom, during sessions of the court or recess between sessions, and the broadcasting or televising of court proceedings detract from the essential dignity of the proceedings, distract participants and witnesses in giving testimony, and create misconceptions with respect thereto in the mind of the public and should not be permitted."

The order of the district judges is further based upon a unanimous condemnation of televised trials by the Judicial Conference of the United States. It was there:

> "RESOLVED, That the Judicial Conference of the United States condemns the taking of photographs in the courtroom or its environs in connection with any judicial proceeding, and the broadcasting of

judicial proceedings by radio, television, or other means, and considers such practices to be inconsistent with fair judicial procedure and that they ought not to be permitted in any federal court."

A further basis for the order is Rule 53 of the Federal Rules of Criminal Procedure which prohibits the "broadcasting of trials". Rule 53 provides:

"The taking of photographs in the courtroom during the progress of judicial proceedings or radio broadcasting of judicial proceedings from the courtroom shall not be permitted by the court."

It is interesting to note that the Supreme Court of California, although not specifically adopting Canon 35, has assumed it was "improper to televise criminal proceedings". See People v. Stroble, 36 Cal. 2d 615, 226 P. 2d 330 (1951), affirmed 343 U.S. 181, reh. den. 343 U.S. 952 (1952); see the Rule adopted by the Conference of California Judges, 24 Cal. State Bar J 299 (1949).

Had counsel for appellant Amsler prevailed in the trial court in his effort to permit the televising and broadcasting of this trial of great notoriety, the very same conditions might have then existed which led the U. S. Supreme Court to reverse in Estes v. Texas, 381 U.S. 532, 14 L. ed. 2d 543 (1965). In Estes, the Supreme Court held that televising and broadcasting Estes' trial deprived Estes of his right to due process under the Fourteenth

Amendment. As the court states:

> "The federal courts prohibit it by specific rule. This is weighty evidence that our concepts of a fair trial do not tolerate such an indulgence. We have always held that the atmosphere essential to the preservation of a fair trial - the most fundamental of all freedoms - must be maintained at all costs. . . ."
>
> Estes v. Texas, supra, p. 549.

Appellant Amsler relies on Matter of Oliver, 333 U.S. 257, which as appellant points out, dealt with secret trials as a denial of the right of "Public Trial" under the Sixth Amendment [Amsler's Op. Br. p. 44]. As Chief Justice Warren observed in his concurring opinion in Estes:

> "Nothing in this opinion is inconsistent with the constitutional guarantees of a public trial. . . . But the guarantee of a public trial confers no special benefit on the press, the radio industry or the television industry . . . and the concept of public trial cannot be used to defend conditions which prevent the trial process from providing a fair and reliable determination of guilt."
>
> Estes v. Texas, supra, p. 573.

Appellant Amsler completely ignores the pronouncement in Estes. His argument is without merit.

7. THE TRIAL COURT DID NOT ERR IN REFUSING THE REQUEST BY AMSLER'S COUNSEL TO TAPE THE PROCEEDINGS.

Appellant Amsler alleges that the court's denial of his request to tape record the proceedings was a violation of his constitutional right to a public trial [Amsler's Op. Br. pp. 61-62A]. The record will reflect that Amsler's counsel advised the trial court that he intended to tape the prosecution's closing argument, that he had taped "some of the pre-trial matters" without objection. The court stated that the court had no objection about it at that time and that if the recording devices were out of the sight of the jury, the court would not object, provided that if the recording be published to any person other than the three defendants and their counsel, the court would consider it a contempt [R. T. 4037-4038]. Thereafter, following the Prosecutor's opening argument to the jury, the court stated for the record:

> " . . . I would like to say for the record that it appears that by my ruling to accommodate Mr. Lavine upon his representation concerning his desire to have some record of the opening statement, that I have violated a local rule of this court. I have set a precedent which it is feared by many here that it might be used in some way to on a wedge to find devices to impeach the official record of this court.
>
> "I don't know what the intention of Mr. Lavine

was about it. I know what he represented to me, and I accept his representation. I will abide by the order, but I notice that there are some further restrictions that I will have to put on it. I know of no reason why counsel for the defendants' opening statement should be recorded, and I won't grant it. You may record the balance of the Government's opening statement, but I see no need for you to record the Government's closing argument. It has no purpose and I won't permit it. So in addition to the non-publication of any recording made by you, Mr. Lavine, that is already read into the record, I will state for the record that it would be a contempt if the recording made by you should in anywise ever be attempted by any person to be used to impeach in some way or to contradict or somehow impugn the official record." [R. T. 4097-4098].

Thus the court did not, as appellant Amsler puts it, deny Amsler's counsel the right to tape the proceedings [Amsler's Op. Br. pp. 61-62]. The court, in fact, allowed the recording of the Government's opening statement but saw no need for recording the Government's closing argument and advised Amsler's counsel that should the recording made by Amsler's counsel be used to impeach the official record, it would be a contempt. Amsler's counsel made no objection and cannot now raise this alleged error on this appeal [R. T. 4098-4099]. In all events, this was a matter within the

discretion of the trial court which was soundly exercised. Harris v. United States, 261 F.2d 792 (9th Cir. 1958).

8. THE PROSECUTOR WAS NOT GUILTY OF ANY PREJUDICIAL MISCONDUCT.

Amsler contends that "the prosecutor was guilty of prejudicial misconduct in eliciting a conversation between defendant Keenan and F. B. I. Agent Murphy to the effect that Keenan considered and abandoned the idea of kidnapping Tony Hope, Bob Hope's son; that his testimony was the subject of a newspaper story which was prejudicial and that the trial judge erred in denying a motion for mistrial and a motion to strike the testimony [Amsler's Op. Br. pp. 62A-66, Cts. Ex. 10; R. T. 2768-2777]. There is no merit in these contentions. The reference to Tony Hope was set forth in an F. B. I. interview report which was given to all defense counsel several days before the witness testified [R. T. 2773-2774]. At the time the testimony was elicited by the prosecutor, no objection was made by defense counsel [R. T. 2677-2678]. Counsel for defendant Keenan cross-examined on the same subject matter, again without objection [R. T. 2712]. Appellant Amsler makes no showing other than his counsel's unsupported statement, that he was prejudiced by the evidence or the news release [Amsler's Op. Br. pp. 64-67]. This is understandable since there was no error in the admission of the evidence, it being proper evidence to go to the jury to be considered only as to intent and the

jury was so instructed [R. T. 2773-2775]. Toles v. United States, 308 F. 2d 590, 593 (9th Cir. 1962); Schwartz v. United States, 160 F. 2d 718 (9th Cir. 1947). In any event the testimony was offered only against the defendant Keenan [R. T. 2685] whose counsel did not object and who was cross-examined in the same area [R. T. 2712].

G. THE INSTRUCTIONS.

THERE WAS NO ERROR INVOLVED IN THE JURY INSTRUCTIONS GIVEN AND REFUSED.

1. THE RULES OF THIS COURT PERTAINING TO ASSIGNING JURY INSTRUCTIONS AS ERRORS ON APPEAL WERE NOT FOLLOWED.

The Rules of the United States Court of Appeals for the Ninth Circuit provide in pertinent part that appellant's brief shall:

> "When the error alleged is to the charge of the court, the specifications shall set out the part referred to totidem verbis, whether it be in instructions given or instructions refused, together with the grounds of the objections urged at the trial." [Rule 18, 2(d)].

[Cf., Amsler's Op. Br. pp. 11, 36 and errata sheet].

2. THE TRIAL COURT DID NOT ERR IN REFUSING TO GIVE AMSLER'S REQUESTED INSTRUCTIONS NOS. 1, 2, 4, 5, 6, 8, 9 and 10 BECAUSE IT GAVE IT, IN SUBSTANCE AND EFFECT, IN GIVING DEFENDANT KEENAN'S REQUESTED INSTRUCTIONS NO. 10 [R. T. 4007, 4008; C. T. 318].

The Court instructed:

"When one in the exercise of his own free will, and with knowledge of what is taking place with respect to his person, voluntarily and willingly consents to accompany another, the latter cannot be guilty of kidnapping the former so long as such condition of consent exists." [R. T. 4244-4245].

3. THE TRIAL COURT DID NOT ERR IN REFUSING TO GIVE APPELLANT'S REQUESTED INSTRUCTIONS NOS. 3, 7, 11 and 12.

These four requested instructions dealing with pre-arrangement by the victim or someone on his behalf, of the kidnapping for publicity, advertising or a hoax were, in substance and effect, given in whole or part by the Court when it instructed as follows:

"In connection with the defendants' theory, you are instructed that if you find from the evidence in this case that the act of alleged kidnapping as charged in count 2 was prearranged by Frank Sinatra, Jr., or

any person on his behalf for publicity, advertising, or otherwise, you must acquit the three defendants on the conspiracy charge to violate the kidnaping laws of the United States and of the kidnaping of Frank Sinatra, Jr., as charged in count 2."

Even assuming Amsler's proposed instructions were a correct and reasonably precise statement of the law, the Court is not bound to accept the language which counsel employs in framing instructions nor is it bound to repeat instructions already given in different language.

Agnew v. United States, 165 U.S. 36, 51 (1897).

Amsler's requested instructions taken on their face were not even correct or precise statements of the law. As to Amsler's requested instruction No. 3 ("If you believe that Frank Sinatra, Sr. put up $240,000 in money for the purpose of getting publicity for his son and not for ransom, you must acquit. . . .") [C. T. 119], obviously the victim's father's motives are not an element of the offense. As to Amsler's No. 7, i.e. "in this case the element of specific intent to commit a crime is essential before you can convict. If you find that the transactions were youthful pranks and not a crime you must acquit. . . ." [C. T. 123, emphasis added], on its face this instruction is, at the very least, poorly and imprecisely drawn (e.g., use of the word "case" instead of the appropriate count) and is not the law.

As to Amsler's requested Instruction No. 12, how could it

have been given as framed, i.e., "If you find in this case that the acts charges were prearranged for publicity or advertising or otherwise than for ransom or reward, then you must acquit . . ." [C. T. 128]. Prearranged by or on behalf of whom? Which count or counts are involved?

Amsler's requested Instruction No. 11 [C. T. 127] and the substance of those rejected instructions which contained proper statements of the law were given in superior, more precise fashion by the trial judge [R. T. 4244].

With respect to defendant's proposed Instruction No. 13 [Amsler's Op. Br. App. E 48], this, of course, is not even a jury question and the court properly instructed on the issue of "voluntariness" [R. T. 4260-4261].

With respect to defendant's proposed Instruction No. 21 [Amsler's Op. Br. App. p. 49], the proposed instruction is unintelligible, e.g., "kidnapping . . . is defined as the consideration paid . . .".

Finally it must be remembered that the trial judge has a duty to reject requested instructions not supported by some evidence. There is not a shred of evidence as to the portion of Instruction No. 21 dealing with money being "put up to secure publicity for Frank Sinatra, Jr." [R. T. 4244-4245].

H. THE TRIAL COURT DID NOT ERR IN DENYING APPELLANTS' MOTION FOR MISTRIAL BASED ON MATERIAL PUBLISHED BY THE VARIOUS NEWS MEDIA DURING THE TRIAL AND THE MANNER IN WHICH THE TRIAL JUDGE INTERROGATED THE JURY.

1. THE NATURE OF THE PUBLICITY.

After he had completed his testimony at the trial, Frank Sinatra, Jr. was interviewed by The Los Angeles Times and an article was published on February 29, 1964 entitled, "Sinatra, Jr. Disturbed Over Public's Attitude". A portion which counsel for defendant Keenan cited as being prejudicial to his client and on which he based a motion for mistrial [R. T. 2972-2973] was a paragraph of the article entitled, "People Doubt Me", in which Sinatra, Jr. complained that "people doubt me and give me an accusing look. The defense infers I am a fraudist." The article further quoted Sinatra, Jr. as stating, "The only individual that irritated me in this whole thing was that Barry Keenan. He was the boss. He gave the orders. He waved the gun authoritatively. He jeopardized the other two (Joseph Amsler and John Irwin). He sucked them in." [Court's Exhibit No. 12]. In another portion of the newspaper article the witness was quoted as giving the following reason why he cooperated with his three accused kidnappers. "I only did it because of the threat on my life. It's hard for people to understand that, but I had a gun in my neck and I couldn't duel with them in fisticuffs. I had no real chance to escape." [Court's Exhibit No.

12].

At the outset, we note that the foregoing publicity appears to be directed primarily at defendant Keenan, rather than appellants, and dealt with matters that had been extensively argued to the jury by counsel for the defense, testified to by witnesses and admitted into evidence [R. T. 16-24, 28, 34-35, Ex. 59, 61].

2. THE MANNER IN WHICH THE TRIAL COURT HANDLED THE MATTER.

The foregoing publicity was released on February 29, 1964. Counsel for defendant Keenan moved for a mistrial on March 2. Appellants Irwin and Amsler did not join in this motion. The trial court took the motion under submission and advised counsel that the court would wait until the close of the evidence in the case [R. T. 2973-2974]. After defendants had rested their cases the trial court dealt with defendant Keenan's motion for a mistrial by discussing the subject article with the jury as a whole generally and then with each juror individually [R. T. 3966-3980, inclusive]. The court directed that a transcript of that interview be transcribed and presented to the clerk and sealed, not to be opened until the close of the case and upon order of the court. The court, having been satisfied from its interrogation of the jury, denied the motion [R. T. 3981]. No objection was registered by defense counsel at that time. The next day appellants moved for a mistrial, contending that the court's interrogation of the jurors in the absence of the

defendants or their counsel was in violation of their constitutional rights [R. T. 4025-4027].

3. APPELLANTS HAVE FAILED TO MEET THEIR BURDEN OF DEMONSTRATING PREJUDICE.

The burden is on the appellant to show actual prejudice. As the Supreme Court stated in Beck v. Washington, 369 U.S. 541 (1962), at p. 558:

> "While this court stands ready to correct violations of constitutional rights, it also holds that 'it is not asking too much that the burden of showing essential unfairness be sustained by him who claims such injustice and seeks to have the result set aside, and that it be sustained not as a matter of speculation but as a demonstrable reality'." (quoting in part from United States ex. rel. Darcy v. Handy, 351 U.S. 454, 462 (1956); John Marshall et al. v. United States (9th Cir. 1966), decided January 27, 1966, No. 19,383.

See also:

Holt v. United States, 218 U.S. 245, 251 (1910);

Cohen v. United States, 297 F.2d 760, 764 (9th Cir. 1962), cert. den. 369 U.S. 865;

Dennis v. United States, 302 F.2d 5 (10th Cir. 1962);

United States v. Applegarth, 206 F. Supp. 686, 687 (D. C. Md. 1962).

Appellant Irwin incorrectly states that "upon questioning of each of the individual jurors by the judge, only one juror and one alternate juror indicated that they had seen the article, but both jurors stated that they formed no impressions from such reading" [Irwin's Op. Br. p. 33] [Emphasis added]. This is misleading. The record shows that Juror Gramm stated: "I'm sure I saw the headline but further than that, no, I didn't read it." He further stated he did not even "recall what it was, that he read none of the details and formed no opinion"[R. T. 3971]. Alternate Juror Beard stated he had "seen the captions" but had not read "any content" and formed no opinion whatsoever [R. T. 3977] [Emphasis added]. All the other jurors and alternates had no knowledge of the article whatsoever [R. T. 3966-3980].

Appellant Amsler thus makes no attempt at a showing of prejudice beyond the bare assertion of his counsel that the interview which "made headlines which would necessarily be picked up by other news media, was highly prejudicial to the defense . . ." [Amsler's Op. Br. p. 73].

Appellant Amsler misstates the facts when he refers to the court "entering the jury room" implying that the jury was deliberating [Amsler's Op. Br. pp. 66, 71].

Appellants have made no showing here which should disturb the general rule that the discretion of the trial court will not be upset on appeal except for a clear abuse of its discretion.

Marshall v. United States, 360 U.S. 310, 312 (1959);

Holt v. United States, 218 U.S. 245, 251 (1910);

Cohen v. United States, supra;

Yates v. United States, 225 F.2d 146, 165 (9th Cir. 1955), reversed on other grounds, 354 U.S. 298 (1957);

Madden v. United States, 20 F.2d 289, 294 (9th Cir. 1927);

Dranow v. United States, 307 F.2d 545, 564 (8th Cir. 1962);

Lewis v. United States, 277 F.2d 378 (10th Cir. 1960).

As to appellants' contention that the trial court committed prejudicial error in interrogating the jurors as to whether they had seen the publicity and as to its possible influence upon their deliberations, appellant Amsler does not even attempt to make a showing of actual prejudice [Amsler's Op. Br. pp. 66-71] and appellant Irwin simply asserts that since the trial judge did not tell the jury why the appellant and his counsel were absent, the jury " . . . may well have engaged in unwarranted speculation concerning appellant's guilt". Thus appellant Irwin himself appears to be indulging in speculation which is not the "demonstrable reality" as to prejudice which the Supreme Court announced in Beck v. Washington, supra [Irwin's Op. Br. p. 35].

Appellants have relied upon a line of cases which are inapposite to the case at bar. As appellant Irwin observes Evans,

Neal and Ah Fook Chang dealt with "out of presence instructions" [Irwin's Op. Br. pp. 35-36]. As the trial court below pointed out in denying the motion for mistrial:

> ". . . I can quite understand that if the court went to the jury and gave them some instructions or discussed any phase of the case with them, that is, the evidentiary phase of the case with them, that would be highly improper. But what I did yesterday in connection with my conference with the jury as a whole and each one of them separately was nothing more than what the Supreme Court has directed the United States District Courts to do. In the event that there is some out-of-court publication which the defendant claims tends to deny him of the right of free trial and due process, that the court makes its own investigation by talking to the jury and making a record of that fact and of the substance of the conversation, and then entering his ruling. That I have done, and it is by direct command of the United States Supreme Court." [R. T. 4027-4028, Amsler's Op. Br. pp. 69-71].

Marshall v. United States, 360 U.S. 310, 312 (1959); United States v. Accardo, 298 F.2d 133 (7th Cir. 1962).

In Holt v. United States, 218 U.S. 245, 251 (1910), Mr. Justice Holmes stated:

> ". . . If the mere opportunity for prejudice or corruption is to raise a presumption that they exist, it will be hard to maintain jury trial under the conditions of the present day. Without intimating that the judge did not go further than we should think desirable on general principles, we do not see in the facts before us any conclusive ground for saying that his expressed belief that the trial was fair and the prisoner has nothing to complain of is wrong."

All the cases relied on by appellants by their own language and as subsequently interpreted by later decisions are limited in their determinations of prejudice to the specific facts and particular circumstances involved in the setting of those trials.

4. TRIAL COURT DID NOT ABUSE ITS DISCRETION IN THE MANNER IN WHICH IT DEALT WITH THE MOTIONS FOR MISTRIAL AND THE PUBLICITY UPON WHICH THEY WERE BASED.

The trial court repeatedly admonished the jury during all stages of the trial and in its terminal instructions to listen to all of the evidence in the case and to decide the facts only upon the legally admissible evidence produced in court and the jurors were not to expose themselves to news media insofar as it related to this

case. That the trial court was more than sensitive to this problem is reflected in the instructions which were repeatedly urged upon the jurors collectively [R. T. 169, 607, 848, 1251, 1737, 2004, 2272, 2500, 2762, 2961, 3201, 3491, 3773, 3956]. Appellant Amsler's same counsel at the trial saw nothing wrong with a headline article in the same paper concerning the same case as to a theory of the defense on which no evidence had at that time been introduced [R. T. 1008-1009].

As this court said in Yates v. United States, 225 F. 2d 146 (9th Cir. 1955), reversed on other grounds, 354 U. S. 298 (1957), and very recently in John Marshall et al. v. United States (9th Cir. 1966), No. 19, 383, decided January 27, 1966:

> "The trial judge believed this jury could be trusted. It had received the individual interrogation, admonitions and instructions required. On well known principles relating to his better opportunity to observe and judge the intelligence, understanding and credibility of those persons he has personally interviewed, we will not, without substantial reason, substitute our own determination for that of the trial judge."

For the reasons stated, it is respectfully submitted that the judgments and sentences of the court should be affirmed.

Respectfully submitted,

MANUEL L. REAL,
United States Attorney,

JOHN K. VAN DE KAMP,
Assistant U. S. Attorney,
Chief, Criminal Division,

DONALD A. FAREED,
Assistant U. S. Attorney,
Chief Trial Attorney,

Attorneys for Appellee,
United States of America.

CERTIFICATE

I certify that in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/ Donald A. Fareed

DONALD A. FAREED

APPENDIX "A"

"UNITED STATES DISTRICT COURT

"SOUTHERN DISTRICT OF CALIFORNIA

"In the Matter of Photographing, Broadcasting, Telecasting in Courtrooms, et cetera.	ORDER

FILED
JAN 20 1964
Clerk, U.S. District Court,
Southern District of California
By E. Drew, Deputy

WHEREAS, the Judicial Conference of the United States, at its meeting on March 8-9, 1962, adopted the following resolution (Report of the Judicial Conference of the United States proceedings March 8-9, 1962):

"Resolved, That the Judicial Conference of the U. S. condemns the taking of photographs in the courtroom or its environs in connection with any judicial proceedings, and the broadcasting of judicial proceedings by radio, television, or other means, and considers such practices to be inconsistent with fair judicial procedure and that they ought not to be permitted in any federal court."

and,

"WHEREAS, said Resolution enlarges the provisions of Federal Rules of Criminal Procedure, Rule 53, prohibiting photographing, broadcasting

and televising in courtrooms during the progress of judicial proceedings so as to include not only criminal but also civil proceedings, and so as to exclude photographing, broadcasting and televising not only from the courtrooms, but also from its 'environs'; and

"WHEREAS, Canon 35 of the American Bar Association provides in part as follows:

> 'Proceedings in court should be conducted with fitting dignity and decorum. The taking of photographs in the courtroom during sessions of court, recesses, or between sessions, and the broadcasting or televising of court proceedings are calculated to detract from the essential dignity of the proceedings, distract the witness so that his testimony degrades the court and creates misconception with respect thereto in the minds of the public, and should not be permitted.'

and

"WHEREAS, this Court requested clarification of the above quoted Resolution of the Judicial Conference of the United States as it may affect Naturalization proceedings and was advised that this matter had specifically been considered and that the Resolution did not exclude Naturalization proceedings, even

though American Bar Association Canon 35, in a portion not quoted, excepted such proceedings from the Canon; and

"WHEREAS, subsequently thereto the Judicial Conference of the Ninth Circuit requested an amendment to the Resolution to permit 'news media' courtroom photography or telecasting of naturalization and ceremonial matters to be had in accordance with local rule of court, which request has not yet been acted upon; and

"WHEREAS, in order to avoid misunderstanding with representatives of news media, it appears necessary to clarify the subject of photography, telecasting and broadcasting from or in the courts and environs in order to conform to the standards set by the Judicial Conference of the United States;

"NOW, THEREFORE, IT IS HEREBY ORDERED that all forms, means and manner of taking photographs, or broadcasting or televising on or from the entire second floor or any part thereof, and Hearing Rooms No. 1 and No. 2 and corridors leading thereto on the Main Street Floor, of the United States Post Office and Court House Building, located at 312 North Spring Street, Los Angeles, California, are hereby prohibited during the course of, or in connection with, any judicial proceedings, whether court is actually in

session or not.

"Dated: January 20, 1964.

"Peirson M. Hall
"Peirson M. Hall, Chief U.S. District Judge

"Leon R. Yankwich
"Leon R. Yankwich, U.S. District Judge

"Wm. C. Mathes
"Wm. C. Mathes, U.S. District Judge

"Harry C. Westover
"Harry C. Westover, U.S. District Judge

"James M. Carter
"James M. Carter, U.S. District Judge

"Wm. M. Byrne
"Wm. M. Byrne, U.S. District Judge

"Thurmond Clarke
"Thurmond Clarke, U.S. District Judge

"----------(Absent)
"Fred Kunzel, U.S. District Judge

"M. D. Crocker
"M. D. Crocker, U.S. District Judge

"Albert Lee Stephens, Jr.
"Albert Lee Stephens, Jr., U.S. District Judge

"Charles H. Carr
"Charles H. Carr, U.S. District Judge

"Jesse W. Curtis
"Jesse W. Curtis, U.S. District Judge

"E. Avery Crary
"E. Avery Crary, U.S. District Judge"

APPENDIX "B"

Chapter II, Rule 3, Local Rules, United States District Court for the Southern District of California, Central Division:

"NEW RULES GOVERNING ASSIGNMENT.

"Rule 3. The criminal calendar of the central division.

"It is Ordered:

"(1) All criminal cases and proceedings filed in the Central Division of this Court shall be assigned to a Judge of the Central Division, other than the Chief Judge, in the order of seniority to begin with Judge Harry C. Westover who is hereby assigned as such Judge until January 1, 1962.

"(2) The Judge of the Criminal Department shall preside over the criminal calendar for a period of a calendar year, to be followed, for a like period, by another Judge in the order of seniority, excluding the Chief Judge and Judges assigned regularly to the Northern and Southern Divisions of the District.

"3(a) Each Judge to whom is assigned the criminal calendar shall hear all arraignments, pleas, motions and proceedings other than trials, provided that when a case has been transferred from the Criminal Department, and a superseding or other indictment or information relating to the same case

is filed, all arraignments, pleas, motions and other proceedings shall be heard by the Judge to whom the original case was transferred.

"(b) When a plea of guilty or nolo contendere is entered, the Judge in the Criminal Department shall retain the case for disposition and sentence.

"(c) When a plea of not guilty is entered, the Judge in the Criminal Department shall transfer the case, in the order now employed by the Clerk of this Court in assigning civil cases to the Judges upon filing, to another Judge regularly assigned and sitting full time in the Central Division, other than the Chief Judge and himself, for setting on his own calendar.

"(d) The Judge in the Criminal Department may also transfer to another Judge, in the manner herein provided, the hearing of motions or proceedings, in any case, when he is of the view that the matter involves questions of law or fact which should be determined by the Judge who is to try the case. He may also take over for trial from another Judge any criminal case, if both Judges so agree.

"(4) The Judge in the Criminal Department is hereby empowered during his incumbency, to transfer, in the manner provided in 3 (c) and 3 (d) hereof, motions or matters and cases for trial to the Judges regularly assigned and sitting full time

in the Central Division, other than the Chief Judge, each of whom shall accept the motions, matters and cases so transferred, unless he is disqualified.

"(5) When a plea of not guilty has been entered and the Clerk has opened the envelope to remove the card indicating the name of the transferee Judge, all further proceedings, including a change of plea, shall be before the transferee Judge.

"(6) Whenever the Judge in the Criminal Department is unable, for any period of time, because of illness, disability, unavoidable absence or other justifiable causes, to perform his duties, he is authorized to arrange with any other Judge of the District for the performance of his duties. Should he fail or be unable to do so, the Chief Judge may designate another Judge to perform such duties during such period of inability or disability.

"(7) Rule III of the 'Rules Governing Assignment' (the text of which is printed on pages 43 and 44 of the Printed Rules of this Court) is hereby rescinded in its entirety.

"(8) The Order of the Judges of this Court dated April 4, 1960, filed April 11, 1960, entitled 'Civil Case Credit for Short Criminal Cases,' is hereby also rescinded in its entirety.

"(9) Rule II of the 'Rules Governing Assign-

ment' (the text of which is printed on page 42 of the Printed Rules of this Court) is hereby amended by striking the word 'civil' wherever it occurs in that Rule, including the Title thereof."

TIME OF CALL*	SOURCE AND BY WHOM	PARTY CALLED AND LOCATION	SUBJECT DISCUSSED	EXHIBIT NUMBER	RECORD REFERENCE REMARKS
(1) 9:05 a.m.	Irwin, assisted by Amsler (Mason Avenue hideout, Canoga Park, California, Telephone Number 341-6056	Frank Sinatra, Sr. (Mapes Hotel, Reno, Nevada) Telephone Number 702 FA-31611	Father allowed to speak with his son - told they want money and to expect further calls	160 40F 61	Overt Act #13, Count One Count Three C. T. 4, 6 R. T. 1320, 1674-77, 3833, 3840-3842
(2) 11:40 a.m.	ibid	ibid	Sinatra, Sr. out - his attorney Mickey Rudin takes call - told there would be later calls	168 40F 61	Overt Act #14 Count One C. T. 4 R. T. 1680, 3845
(3) 11:50 a.m.	ibid	ibid	Sinatra, Sr. told to go to Ron's Service Station, 201 N. Carson - bring a pencil and note pad	162 40F 61	Overt Act #15 Count One C. T. 4 R. T. 1682, 1685-1687, 3845
(4) 12:28 p.m.	ibid	ibid	Attorney Rudin took call - Sinatra, Sr. had left - caller told of mistaken address as to Ron's Service Station	169 40F 61	Overt Act #16 Count One C. T. 4 R. T. 1682-1688, 3850
(5) 12:50 p.m.	ibid	Sinatra, Sr. at Ron's Service Station, Carson City, Nevada Telephone Number GR. 2-9890	"We want $240,000" in denominations specified - told to go to Oxoby Chevron Station, Carson City, Nevada where he would receive another call	180 40F 48 61	Overt Act #17 Count One Count Four C. T. 4, 8 R. T. 1335-1341, 3850
(6) 1:10 p.m.	ibid	Sinatra, Sr. at Oxoby's Station, Carson City, Nevada	Told to obtain courier to handle ransom payment. Asked for telephone number of victim's mother (Bel Air). Told to go there that night when he would be called.	40F	Overt Act #18 Count One Count Five C. T. 3, 9 R. T. 1341-1345; 3840-3851; 3898; 3224-3229

* Calls made on December 10, 1963

TIME OF CALL	SOURCE AND BY WHOM	PARTY CALLED AND LOCATION	SUBJECT DISCUSSED	EXHIBIT NUMBER	RECORD REFERENC - REMARKS
(7) 9:26 p.m.	ibid	Sinatra, Sr. at residence of Mrs. Sinatra, Bel Air, California	Told to go to Standard Station at Camden & Santa Monica Blvd., Beverly Hills, California where he would receive next call.	Ex. 61 p. 19	Overt Act #19 Count One C. T. 4 R. T. 1349, 1714-1717
(8) 9:57	ibid	Sinatra, Sr. at Standard Station Beverly Hills, California	Told to have courier with the ransom money go to a specified telephone at Los Angeles International Airport where courier would be contacted.	Ex. 61 p. 19	Overt Act #20 Count One C. T. 4 R. T. 1350-1353; 1326